MEETING

STATE OF CALIFORNIA

STATE LANDS COMMISSION

STATE CAPITOL

ROOM 447

SACRAMENTO, CALIFORNIA

WEDNESDAY, DECEMBER 12, 1990

11:15 A.M.

Vicki L. Medeiros, C.S.R.
License No. 7871
COMMISSIONERS PRESENT

Leo T. McCarthy, Lieutenant Governor, Chairman

Jim Tucker, Commission Alternative
for Gray Davis, State Controller

James Dwight, Commission Alternate
for Jesse R. Huff, Director of Finance

STAFF PRESENT

Charles Warren, Executive Officer

James Trout, Assistant Executive Officer

Robert Hight, Chief Counsel

Lance Kiley, Chief, Land Management and Conservation Division

ALSO PRESENT

Jan Stevens, Deputy Attorney General
Proceedings

Confirmation of Minutes for the meeting of October 29, 1990

Consent Calendar Items off calendar, C 9, 28, 30, 32, 33, 41, 42, 46

Item C 39 moved to Regular Calendar

Item C 20 moved to Regular Calendar

Remainder of Consent Calendar approved

Item 43, Wickland Oil Terminals (Applicant/Lessee)

Item 44, Sienna Corporation (Party)

Item 45, Basell Land Company (Party)

Item 46, off calendar

Item 47, Fleur Du Lac Estates Association (Applicant)

Item 48, State Lands Commission (Party)

Item 49, Bureau of Land Management and State Lands Commission (Parties)

Item 50, Marina Group; City of Foster City; California Department of Fish and Game (Parties)

Item 51, American Block Company (Applicant)

Item C 20, Chevron U.S.A., Inc. (Lessee)
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CHAIRMAN MCCARTHY: Good morning, ladies and gentlemen. I am Leo McCarthy. On my left is Commissioner Jim Dwight, representing the Department of Finance. To my right is Commissioner Jim Tucker, representing State Controller Gray Davis.

Minutes of the last Meeting are approved as read. We used to do that around here, just restoring an old habit.

The Consent Calendar, we're taking off 39. Are we taking off anything else?

EXECUTIVE OFFICER WARREN: Items number 9, numbers 28, 33, 30 and 32, those are to be removed from the Consent Calendar.

Consent Calendar Item Number 39, Mr. Chairman --

CHAIRMAN MCCARTHY: Did everyone in the audience understand that the Consent Items taken off Consent are 9, 28, 30, 32, 33, 41, 42 and 46. That is what I was just handed.

Pulled from the file?

EXECUTIVE OFFICER WARREN: Pulled from the file.

CHAIRMAN MCCARTHY: 39 is put on the Regular Calendar.

Okay. We have it.
Any questions on the remainder of the Consent Calendar?

COMMISSIONER DWIGHT: Items 19 and 20, which involve Chevron, are items that I am unable to vote on because I have an equity ownership position. I have stock.

CHAIRMAN McCARTHY: All right. Let's have that recorded.

EXECUTIVE OFFICER WARREN: One other thing, Mr. Chairman, Consent Calendar Item 20, there are some technical changes that have to be made in the item as presented. These changes are purely technical and have to do directly with the numbers. The numbers are out of sequence.

CHAIRMAN McCARTHY: Take it off Consent and put it in the Regular Calendar, and you can put in the technical amendments at that point and we will pass on it. What remains of the Consent Calendar, any other questions?

If not, the remainder of the Consent Calendar is adopted.

Let's turn to the Regular Calendar now.

Mr. Warren.

EXECUTIVE OFFICER WARREN: The first Regular Calendar Item, Number 43, is to be presented to you by the Chief of our Land Management Division, Lance Kiley.

MR. KILEY: Mr. Chairman and Commissioners, this
particular item is to allow Wickland Oil Company to encumber a lease, an additional lease, which the Commission has leased to them, at the Selby site in Contra Costa County.

The Commission has previously approved consent to encumber a lease that is used now for a pier. We have gotten far enough along in the remediation of the slag at this site so that financing institutions are now willing to consider consents to encumber the remaining parcel that is leased to Wickland, and they would be -- the encumbering parties would be represented by the Bank of Boston.

CHAIRMAN McCARTHY: Any questions by Commissioners?

Questions by the audience on Item 43?

If not, the recommendation is adopted.

Next.

EXECUTIVE OFFICER WARREN: Item 44, Mr. Chairman, that will be presented to you by Blake Stevenson of our staff.

MR. STEVENSON: Good morning, Commissioners. Item Number 44 involves Ball Ranch, a title settlement agreement in rural Fresno County affecting a parcel of approximately 592 acres, about three miles downstream from Friant Dam.

The Ball Ranch is presently in the record ownership of a developer, called Sienna Corporation, based in Minnesota. Staff has negotiated a boundary line and exchange
agreement with Sienna Corporation which has several elements.

One of them is to strike a boundary line along the complete water front of the Ball Ranch, about one-mile in length on the San Joaquin River. Basically, the private party would deed to the State, clearing its title on one side of the line, and vice versa would also hold true, we deed to them, clearing the other side of any public trust interest.

We will also secure vertical access from Friant Road, the nearest public road, up to the water front. In addition, we will get $30,000 to go to the Kapiloff Land Bank Fund in exchange for this settlement of title uncertainties, in one particular part of the property.

That about sums up what we are to get here.

CHAIRMAN McCARTY: Any questions by Commissioners?

By members of the audience on Item 44?

All right. Recommendation adopted.

EXECUTIVE OFFICER WARREN: 45, Basell Land Company, Mr. Chairman and Members, will be presented to you by Mr. Curtis Fussell of our staff.

MR. FUSSELL: Mr. Chairman and Commissioners, this item is a recommendation for a settlement of title claims within a tract of land in the City of Stockton.
The Commission approved the annexation of this land to the city in 1989. The Commission has determined that there is a minimal interest for the historic slough within the 360-acre parcel, and has negotiated settlement with the Basell Land Company which would provide for public trust easement being attached to the existing waterways on the site, which are dredger cuts, will protect an adjacent riparian marshland that is going to be part of an ecological reserve that is being protected and restored in the adjacent Spanos' development, and it also involves the Kapiloff Land Bank, either a $27,000 sum coming to the Kapiloff Land Bank, or a parcel of land to be selected on Empire Tract constituting 60 acres.

CHAIRMAN McCARTHY: Any questions by Commissioners?

COMMISSIONER TUCKER: Do you think that it's fair to say that this is consistent with the type of settlement that we engaged in with Grupe?

MR. FUSSELL: Yes. It is consistent. It is a favorable settlement to the State, consistent with both other settlements that we have been involved in in the Stockton area dealing with the historical sloughs such as Spanos and Grupe and others. They are consistent.

COMMISSIONER TUCKER: Send in Mr. Grupe.

CHAIRMAN McCARTHY: Any questions from the members
of the audience on Number 45?

Recommendation is adopted.

46 is off calendar.

47.

EXECUTIVE OFFICER WARREN: Item 47, Mr. Chairman,
Fleur Du Lac Estates, will be presented to you by Mr. Lance Kiley.

MR. KILEY: This is proposal to dredge 300 cubic yards in the Fleur Du Lac harbor to keep a water level sufficient to provide fire protection.

There is a provision in the permit that provides for State Lands Commission and other regulatory agencies to be on-site at the time that this dredging would take place.

EXECUTIVE OFFICER WARREN: We do have a witness slip on this item, Mr. Chairman.

CHAIRMAN MCCARTHY: We have Dena Schwarte.

MS. SCHWARTE: At this time I'm here to answer questions representing Fleur Du Lac, if you have any.

CHAIRMAN MCCARTHY: Any questions of Ms. Schwarte?

All right. Thank you very much.

Any other comments from any other member of the audience?

UNIDENTIFIED SPEAKER: It was my understanding that there is a performance bond associated with this action, also?
MR. HIGHT: That's correct.

CHAIRMAN McCARTHY: Any other comment?

47 is adopted as recommended.

48.

EXECUTIVE OFFICER WARREN: Item 48, Mr. Chairman and Members of the State Lands Commission, Mr. Steve Jones, who is the head of our School Lands Unit, will present this item.

I might say this concerns a proposed timber harvest on school lands in Mendocino County near Covelo on which it was discovered a nesting spotted owl pair and a juvenile. I have asked the staff, knowing of the Commission's interest in forestry matters generally, and the spotted owl problems specifically, to prepare a little more to give you a more extended briefing on both such issues.

CHAIRMAN McCARTHY: Are there any other really brief items that people may be here in the audience on that we could handle before getting to this?

Anyone here on Item 20 that we took off the Consent Calendar and are putting technical amendments into?

Anyone here on any other items that we are holding up?

Yes, sir.

UNIDENTIFIED SPEAKER: Item 39.

CHAIRMAN McCARTHY: 39, that may take some time.
Let's proceed with this item.

MR. JONES: Next to me here is Wade McDonald. He prepared the timber harvest plan and he will be presenting the information.

MR. MCDONALD: My name is Wade McDonald. I'm a Registered Professional Forester, and I work for the State Lands Commission.

We are proposing to harvest 2.1 million board feet of sawtimber from 175 acres of school lands or a 2,785 acre ownership at Hen Pass, which is ten miles northeast of Covelo in Mendocino County.

We have an approved timber harvest plan certified by the California Department of Forestry and Fire Protection, which is the lead agency. A timber harvest plan is the environment document required for the timber harvesting in California and is a functional equivalent of an environmental impact report.

Fifty acres were proposed for harvest prior to the Northern Spotted Owl being declared rare and endangered are now being set aside for a pair of spotted owls and their fledglings. The Forest Practice Rules adopted by the Board of Forestry required the retention of a minimum of 40 percent total canopy for 1336 acres around known spotted owls.

We, however, will be leaving a residual stand with
an estimated crown cover of 60 percent. State Lands Hen Pass
ownership was surveyed for spotted owls on four different
occasions this past spring and summer by Fish and Game
biologist, Ted Wewster. He's one of the twelve biologists
from Fish and Game who can certify that "no take" in
harvesting operation.

After his forest surveys, he has reviewed our plan,
he has certified "no take." Take means to harass, harm,
pursue, hunt, wound, kill, trap, capture or attempt to engage
in any such conduct.

The area in green on the map on the right is the
area where we are proposing to harvest. There are 35 acres
in Section 4 and 140 in Section 9 to the south. The area in
yellow is the area we harvested in 1989. We harvested
approximately 2 million feet on 420 acres.

The harvest we are proposing now is over 175
acres.

I'll give you some past history of our ownership.
Prior to State Land's gaining title to lands in 1980, the
Bureau of Land Management had a number of timber sales
covering the entire block. That is in blue on the map on the
left. They logged approximately 18 million feet in ten
years.

In our opinion, it appears that BLM removed the
high quality trees, leaving the genetically inferior trees to
restock the ground. Our strategy at State Lands has been to remove the low quality trees and leave those trees of higher genetic quality which will grow rapidly and return increased income 20 to 30 years hence.

This also leaves us with a healthier forest less susceptible to insect and disease attack. We ask that you authorize staff to accept bids to enter into a timber sale for the sale of the sawtimber to the highest bidder.

I have photos of the spotted owls that were taken on school lands.

COMMISSIONER TUCKER: Did you have to file an environmental impact report to take these pictures?

MR. MCDONALD: No, we didn't.

COMMISSIONER TUCKER: It doesn't warp their personality?

MR. MCDONALD: They are very friendly. We took some mice out in the woods and dangled the mice in front of the owls.

COMMISSIONER TUCKER: I don't want to hear this. Don't tell Gladys. We'll be in big trouble.

MR. MCDONALD: We fed them mice to determine their nesting location. The male owl will eat a couple, and finally about the third time he is full and then he thinks about his mate. Then he will come down and grab the third one.
EXECUTIVE OFFICER WARREN: It's true all over.

MR. MCDONALD: He takes the third one back to the mate and young. He took off through the woods, and Ted Wewster and I ran after him. He flew about forty yards to the female. That's how we were able to locate the nesting area. We never located the nest. The female will stay within 100 to 200 feet of the nest and will not move away, to protect the nest.

That's all I have to say.

CHAIRMAN McCARTHY: Any other comments?

EXECUTIVE OFFICER WARREN: No, except, Mr. Chairman, the trip that staff took with the biologist of Fish and Game officials was a very instructive and revealing one. We saw evidence of a prior cut some eight years earlier. During that comparatively short time for reforestation efforts because of the techniques used in the cut, it appeared that we had a fully regenerated forest.

The area surrounding the particular parcel seems to be well forested and capable of sustaining or providing alternative habitat for the spotted owl. We did learn. This will be constructive for staff of three initiatives taking place in California concerning forestry, spotted owl and other resource values in forest lands, one by private industry which represents attempt to determine what is known as bird sheds. The idea is to take a look at a larger area
in order to determine what forestry practices could take place in a manner in order to protect the integrity of the bird species, as mainly the spotted owl.

The spotted owl migrates seasonally, and nesting area from nesting area is about twelve miles apart. The approach behind the private effort is to make sure there are suitable nesting refuges for the spotted owl during its life cycle, seasonally and otherwise, which is an effort with which we are most interested and would like to explore with the private logging company.

Secondly, the Secretary of Resources has a Timber Land Management Committee which is, among other things, considering this problem. They meet tomorrow. I will attend. At the meeting I understand that BLM will propose a regionwide management policy for forest lands in California and the spotted owl.

Fish and Game also has a habitat management plan process under way in which we will also hope to participate.

CHAIRMAN MCCARTHY: Any other questions?

Any audience questions?

Ready for a vote?

Anyone object to this?

All right. The Commission is unanimous in acceptance.

Next.
EXECUTIVE OFFICER WARREN: I wonder if perhaps we ought to skip 52 and go to Item 53, Viceroy Gold, at this point?

CHAIRMAN MCCARTHY: Item 39?

EXECUTIVE OFFICER WARREN: I beg your pardon. The next item is Item 49, and to present that is Lance Kiley.

MR. KILEY: This item proposes approval of a Memorandum of Understanding between the Commission and the Bureau of Land Management for the purpose of erecting a fence across a parcel of school land and a cattle guard on a road that crosses the same piece of land.

This purpose of the fence is to allow range rotation on each side of the fence so that the range can be managed in a more competent fashion than what it has been managed in the past.

CHAIRMAN MCCARTHY: Any questions?

Any audience questions on 49?

All right. Accepted as recommended.

EXECUTIVE OFFICER WARREN: The next item is 52, which will be presented by Dave Brown, who is the head of our Administration and Budget Office.

MR. BROWN: The Commission, as you know, and all of State government has sustained a series of a cuts over the last several years. In the most recent budget, we sustained a ten-percent cut; the year before that a three-percen
the year before that a one-percent cut.

This combined with inflation and a lack of price increases has had a substantial impact on the Commission's ability to respond to various projects. As part of this most recent cut, 28 positions were deleted from our budget.

As a result, we have come up with a proposal to charge actual costs for the services that are provided by the Commission. In nearly every instance, the services that are provided are for the actual use of state lands for economic gain of the private party, to the exclusion of use of that land by other parties.

We feel that it's only fair and proper that these costs be internalized and be charged to those who are applying for the use of those state lands.

CHAIRMAN McCARthy: Questions by Members of the Commission?

COMMISSIONER TUCKER: What is proposed? What specifically is proposed?

MR. BROWN: The authority to charge actual cost for recovery of processing fees for applications, a variety, permits, leases and so on.

COMMISSIONER TUCKER: Do you know what the costs would be?

MR. BROWN: Yes, we do.

COMMISSIONER TUCKER: Do you have some examples?
MR. BROWN: Yes, I do.

What I'm handing out is a study done by staff on the various permits and applications that typically come into the Commission over the course of a year. We have taken these and estimated the number of hours for each one, and based on the State Administrative Manual Method of Pricing, came up with a cost per transaction.

There is also a column showing you the current fee and current amount budgeted for recovery of these costs. In nearly all cases, the actual cost for performing the service far exceeds what we have been collecting in the past.

We have developed a budget proposal for 91-92, and that's submitted to Section 28 Application to Department of Finance for 90-91 for re-establishment of 13 positions that were previously deleted by the ten-percent cut.

COMMISSIONER TUCKER: What does this mean where it says proposed fee and contract?

MR. BROWN: Those particular transactions, they are non-routine. We do not know going into it how much time staff will spend on it. We have done a study on what the average will be, and we will require that a deposit be made based on the average. If it takes less time, and the applicant will be required to sign a reimbursement agreement to reimburse us for all of our costs, if it costs less than the fee, we refund the balance. If it's more, we bill them.
In the case of a routine transaction, we will continue with the proposed fee, which is adjusted upward from what we were charging now.

COMMISSIONER DWIGHT: To try to paraphrase for you, where there is clearly established a single-user benefit, the user pays the entire cost to the State Lands Commission for his benefit?

MR. BROWN: We are proposing that all transactions that come before staff be charged out at an actual cost basis.

COMMISSIONER DWIGHT: Your answer would suggest that there is not a clear user benefit in all cases?

MR. BROWN: In some cases where you have a public agency, we have waived any fee in the interest of the public. We do not think in the current condition of the General Fund that the State can subsidize other State agencies, special funded agencies and local agencies, and that the actual cost to perform that service to give that agency the right to manage and use that land should be recouped by the State.

MR. TROUT: Mr. Chairman, the problem that we face is the fact with the series of budget cuts and lack of increases in cost of living that have been assigned to State agencies, we can no longer perform the service unless we charge out these costs. With the reductions and increases
that we have had to absorb, as all State agencies have, we are to the point where we can no longer perform the services unless we have this kind of relief.

The Department of Finance has supported us on that and will shortly notify the Legislature of the intent to do that.

What we have to consider is that if we do not do this, the result is going to be that some projects are just not going to be able to be worked on, which means in effect returning applications and disappointing people who wanted to make a private use of the property or encouraging trespass.

That's why we brought this to your attention.

CHAIRMAN McCARTHY: Looking at the industrial lease and commercial lease sections, help me interpret this. You're saying that under industrial leases there were 11 transactions over what span of time?

MR. BROWN: Over a year.

CHAIRMAN McCARTHY: Total number of hours spent on all the work connected with those industrial leases was 240 hours.

MR. BROWN: Each transaction.

CHAIRMAN McCARTHY: Each transaction, 240 hours?

MR. BROWN: Each transaction, on the average.

CHAIRMAN McCARTHY: Seems like a lot of time.

MR. HIGHT: That's total staff time including
CHAIRMAN McCARTHY: I do not know what the size or complexity of our industrial leases are, but that seems an awful lot of time.

MR. BROWN: The fact is, in a case like that, we only charge the actual costs that we do incur. These are averages provided by staff when we were seeking some kind of relief from the ten-percent cut that we sustained, realizing that we would have to give up 28 positions as a result of that cut, and realizing that we could not continue to perform the services that we had in the past.

CHAIRMAN McCARTHY: I'm not disputing the basic rationale presented here.

Since we are doing this, and this is not the only State agency obviously that is turning to this to do this and Finance has encouraged in other situations use of user fees on a broader scale.

I'm trying to establish in my mind what criteria we are using to establish the prices. It's difficult to find in the private sector some truly comparable work that is being done, but I have a hunch that some of these maybe it is.

MR. BROWN: In every case that we do not know going in, in some industrial leases there are going to be many hours put into it, and other one's, if it's a simple pipeline, it's routine. The applicant is going to be charged
only our actual cost and could be far less than the 240 hours in that case or greater.

CHAIRMAN McCARTHY: This is an average.

MR. BROWN: This is an average. There is a wide enough range of desparity on different transactions that we feel it incumbent upon ourselves to enter into an agreement with the party.

EXECUTIVE OFFICER WARREN: I would also like to point out that CEQA is a time-consuming process to which we, as State agency, are obligated to respond. Depending on the nature, uniqueness, resource affected, the CEQA process and procedural responsibilities of the agency in relation to that process are considerable. If it's a simple, routine process, then the number of hours devoted would be far less.

For example, as you know, we have these marine terminals that are being proposed in terms of either having a lease renewed or extended or cited, and that is becoming or that process is becoming increasingly costly to the extent that we engaged in a programmed EIR with the industry in order to reduce the cost to an individual applicant.

COMMISSIONER TUCY: The industry is paying for the EIR.

EXECUTIVE OFFICER WARREN: That is correct, but that is a process we hope will reduce the amount of time and expense associated with a specific site application.
You're right, the industry is paying for that, which should benefit all future applicants.

MR. TROUT: As is proposed here, the industrial lease.

MR. KILEY: The 240 hours converts to 30 working days for one person, approximately. That's really not bad at all for processing these complex transactions that we are talking about. It's actually a quick time and inexpensive processing cost compared to what we are dealing with here.

We do not have any totally uncomplicated commercial leases to deal with.

CHAIRMAN MCCARTHY: I wasn't guessing that we did. I want us to be in a pretty clear defensible posture here where we're making a significant move here to turn to this, and I want us to be able to satisfy -- there are applicants who are also taxpayers, and we need to satisfy them that these estimates are very sound and very defensible.

COMMISSIONER DWIGHT: The estimate has no bearing on the fee.

MR. BROWN: The estimate is merely a deposit in the case of a more complex.

In every instance where you see contract, those are instances where we are not sure how many hours it's going to take. We have an average. We want that money paid in advance.
MR. HIGHT: In the event that it's less than the average, there would be a refund.

CHAIRMAN McCARTHY: I assume that it's not precisely the same number.

Questions by the Commission?

COMMISSIONER TUCKER: I have a lot of questions. I'm not unsympathetic to the need to generate more revenue for the Lands Commission. Our office is going through the same issues in regards to reductions in services, et cetera, because of having to make cuts.

But, I don't know, I think that there are a lot of issues here. We cover a lot of different kinds of services from -- and it's clear to me over the last four years that most people who pay for a lease do not feel that they are underpaying. Most feedback I hear on leases, commercial leases, is that they are paying too much, if they are put at an unfair, economic disadvantage with other restaurants or whatever it is, and I do not know what the reality is there.

It seems to me in that case we should charge more for the lease rather than charging for the fee to apply.

The problem with the fee to apply for permit or lease or whatever is that it is also going to cover the old lady that has got this dock that her husband built 20 years ago, and she has no money, essentially, and we say you have to have a permit for us, and she says okay and fills out the
papers and stuff, then we say it’s $600. Those people will
be here saying I can’t do this.

The experience, as I understand it with Fish and
Game, they raised their fees and people are not buying the
licenses. We have the consideration, obviously not for PG&E,
people like that, they are going to come in and apply for
their right of ways, but for the small user, non-commercial
user, et cetera, they are just not going to apply. Word gets
out and they will say wait for Lance to catch up with my
little dock here.

I don’t know the answer to these. I’m not saying
these questions are things that should prevent this. I just
think that we’re trying to cover so many different types of
situations from multi-billion-dollar businesses that are
applying for something that is essential to the operation of
their business, for which it seems to me that the State is
entitled to obviously a reasonable return, to other people,
people who are told, who own a farm and we go out and tell
them, your barn is on our line. It’s been on our property
for 40 yeas, and you have to have adjustment. On top of
that we tell them it’s going to be $20,000 because by the
time we get our surveyors out here and so on.

I see those as such different situations. To have
one policy to fit all of them, I just foresee that what is
going to happen is that we’re going to immediately eroding
and trying to figure out how do we make exceptions because Unocal is not the same as the old lady on the river.

I'm afraid that we're going to back into a crazy quilt of exceptions to this policy that we start out with or we're going to be in situations that cost to do something is so great that it becomes prohibitive. If it's $40,000, taking an arbitrary example, to do all the environment studies necessary for someone for a permit for a dock in Lake Tahoe, then in effect we have adopted a policy that there will not be any new docks.

EXECUTIVE OFFICER WARREN: It's curious that you would use Lake Tahoe as an example. I was in Lake Tahoe a little over a week ago meeting the the Tahoe Regional Planning Agency and the Shoreline Owners Association at a public meeting on the point that Mr. Tucker mentioned.

The Property Owners Association was complaining of the processing cost, imposed by TRPA and State Lands for processing permits for piers and buoys and marinas. I raised the point that the piers and buoys added or acquired by permit by TRPA and State Lands Commission increased the value of upland owners' properties far in excess of the processing cost. This fact was acknowledged to be the case by TRPA members and TRPA staff.

The property owners receive in benefits a value far in excess of the processing costs for those piers and buoys.
I would like to say in fairness is that they do not pay rent for that. There is only a one-time cost for that.

On the other hand, we have a dilemma. I would like to come to you and say we could continue to provide the service to the public by making available to the public resources at nominal rates; but we have General Fund pressures, not only on the State but particularly on State Lands Commission because of all the resources agencies we were the only one exposed to a ten-percent cut this year.

CHAIRMAN McCARTHY: Because we're the favorites.

EXECUTIVE OFFICER WARREN: Because we're favorites, yes.

I have never been able to obtain a reasonal or national explanation of that cut; but it was imposed, and we have adjusted to it. This is a major component of our adjustment. It is in line to what we understand to be the Legislative direction for agencies to take. It's a line which has been approved by Finance Department, not only for State Lands but other agencies. It has certain perils. There may well be people coming to complain. If they come to you in such number that it appears we have made a mistake, we will take steps to rectify that mistake. I'm assured that you will instruct us to take steps to rectify that.

With that understanding, I think you have got to let us take this first step and see what the response is.
The alternative is, as Mr. Trout suggests, either stop processing and deny, or face increased incidents of trespassing.

One other thing to have in mind, these are public's resources to which these applicants are seeking access. There are alternatives. If they do not want to pay the fee, they can go somewhere else for their site. I know that's not a great consolation, but that's a fact.

We're not twisting their arm to come to us. It's up to this. It's their voluntary action, and if they are not happy with what the requirements are, then they have options available to them.

On the marinas, it's true, we -- the agency has not had a good rental policy on commercial marinas and restaurants on rivers and lakes. We are in the process of establishing a rental policy which is sound and would be understood by the industry to be applicable equally to all. We should have that ready for you in the next two or three months, I would hope. It needs working out with industry representatives.

Whenever these inequities are discovered, we work with the industry representatives to remove them because we feel people should be handled equally. If they are not, then they have a good basis for complaint.

COMMISSIONER TUCKER: Do you know any other State
agency that is proposing to charge actual costs for
services? Is the Coastal Commission planning to do a similar
thing?

EXECUTIVE OFFICER WARREN: I can't tell you. I do
know that the other agencies have been advised to the extend
they can adopt this policy.

We are unique in a way. We are not only regulatory
but we are also managerial. We have managerial
responsibilities for these resources. The depth or breath of
our decision is far broader than an agency whose mission is
strictly regulatory.

We have to look at these things a little more
comprehensively. It's not just a case of giving a permit to
a marina on the Sacramento River. We have to look at whether
or not there is a surplus of marinas on the river. We have
management responsibilities of the river as a whole.

In the past when we have taken a marina capacity
study, that is appropriate for us to take. It may be
necessary to charge an individual, using that as an example,
if we duplicated that, it would be necessary to increase the
processing fees for one or more individual marina lease
applicants in order to fund that overall more comprehensive
study of the marina capacity on a particular stretch of the
river. That is just an example of what I mean by our
managerial responsibilities as distinguished from regulatory
responsibilities.

COMMISSIONER DWIGHT: Mr. Chairman, in some respects it is unfortunate that this policy is coming to us as a consequence of the fact that we don't have enough money to do what we ought to do. Independent of that, it is still sound public policy.

If you look at the General Fund as representing the taxpayers of California, it is reasonable to presume that only things that benefit all taxpayers will be done with the General Fund.

These instances are basically combinations of individual interests, whether they be public or private, and there is a clear benefit. As Charlie indicated, they do not have to come and ask for the leases or permits or whatever. Presumably they are motivated to come for their own business interest, personal enjoyment or whatever that is, so it is not reasonable that all the taxpayers in California should pay for something that benefits only one individual or business interest or public agency or whatever.

I would submit that this policy is good. Now, whether the application of policy as it is represented here because of these averages, that may be confusing us in the sense that we're trying to judge the situation.

I'm comfortable if an applicant comes in for an industrial lease, and we say we spend 600 hours, and he says
that's preposterous, you couldn't have spent more than 20, we
would have to demonstrate to the interest that we spent 600
hours on his lease.

We're here on the policy matter, and the policy is
should the Commission charge the actual cost, in terms of the
Commission staff time, that it is applicable to a particular
business transaction. I think that is good public policy,
and I'm very comfortable with it.

CHAIRMAN McCARTHY: So, we're going to run on a
billable-hours basis.

COMMISSIONER DWIGHT: Like a law firm.

CHAIRMAN McCARTHY: God help us.

Any other questions?

I do think that you need to think out, Mr. Warren,
the question that Commissioner Tucker has raised and have
your staff review what kinds of, particularly painful, little
old lady or little old men questions there might be. We want
to be consistent in our approach on this thing. We want a
pretty conscious idea if we're going to inflict some pain on
people who are really without resources, and there are asking
a continuance of something in the past. It's not a new
application, or they are responding to stricter requirements
or conditions that we are imposing which revises a set of
conditions under which they have been operating for many
years.
We want some familiarity with those cases so at least we can chew on it and see if we want to make any rational variation. I don’t know if it is possible.

Do you understand the point I’m getting at??

EXECUTIVE OFFICER WARREN: Yes, sir, I do.

COMMISSIONER TUCKER: The other thing is that I think that you have to look at and make sure that you’re not coming up with the situation where the costs are prohibitive. If I’m putting in a $5,000 dock and it costs me $30,000 to get a permit from the Lands Commission, I think that’s a serious problem. Particularly if the fee becomes a way of setting policy.

If what we’re really saying is that we do not want docks in that area and the clever way to do it is make it economically impossible to build. I see a difference between when PG&E comes in and wants a right of way, we have a cost associated with that. PG&E ought to pay it. My assumption is that they probably would without complaining.

If we have to make a study of what does it take to go across the river, I think all of that is fine. In the four years that I have been here, I have seen a wide range of situations. Many of them are not the PG&E type of situation where if somebody is clearly making money out of the deal and they should be sharing with us. Those are the situations that I am concerned about where there is going to be some
inequity or some unfairness in terms of an actual charge that we made in that circumstance. That is what I would like to watch for.

EXECUTIVE OFFICER WARREN: What we're attempting to do by this action today, is this will provide us a means of giving applicants notice before they begin of the cost range that they will face. It will be on an actual hourly billing basis. For whatever it's worth, staff has prepared goals and objectives statement which will be submitted to you shortly, foremost of which is the goal of providing services to the public efficiently and economically.

Those are serious goals. We will strive to do as we hear you instructing us today.

COMMISSIONER TUCKER: Are we complying with the Administrative Procedures Act?

MR. HIGHT: In the Commission's current Rules and Regulation, there is a provision that authorizes the Commission to charge reasonable, actual, the language is actual cost of transactions, not to exceed actual costs. So, the answer to the question is yes.

COMMISSIONER TUCKER: There is a regulation to do this is what you're saying?

MR. HIGHT: Currently, yes.

CHAIRMAN MCCARTHY: Can we advise applicants who come in approximately how many hours it takes to process.
MR. BROWN: Yes. That was the reason for the study, to establish those levels which we can go back to them and say the average for this type of transaction is "X" dollars. We need a check for that amount and sign the attached reimbursement agreement.

CHAIRMAN McCARTHY: You're going to give them the average, or are you going to study the nature of the application to get a grasp of the complexity?

MR. BROWN: If it's obvious, then we would make adjustments accordingly.

CHAIRMAN McCARTHY: Any other questions? Any questions from the audience? Any objections from Members of the Commission to this proposal?

If not, the Commission adopts it unanimously.

EXECUTIVE OFFICER WARREN: Thank you, Mr. Chairman.

I am off course here. I unintentionally skipped two items.

I would like to return back to Item 50. Mr. Kiley will present that item.

MR. KILEY: Item 50 proposes to deny an application by the Marina Group and the City of Foster City for a proposed marina in Belmont Slough near Foster City in San Mateo County.
There was a prior application which was approved by the Commission in 1976 to lease these same premises by the Department of Fish and Game. For various reasons that lease was never consumated, and in the meantime the City of Foster City applied. They did not actively pursue their application. Their application to this date remains incomplete.

Now, Fish and Game has come back and asked the Commission to go ahead and approve the original lease, or go ahead and consummate the original lease that was approved in 1976.

Staff proposes that the application of Foster City be denied at this point and that the Commission authorize the Fish and Game lease to be executed.

CHAIRMAN McCARTHY: Yes, Bruce. Are you going to address this one?

MR. THOMPSON: No, the next one.

CHAIRMAN McCARTHY: It was interesting that you be addressing this one.

I thought they were spreading you out a little bit here.

All right. Any comment or questions from the Commissioners?

Any questions from the audience?

All right. Recommendation adopted.
EXECUTIVE OFFICER WARREN: Item 51, Mr. Chairman, American Block Company, will be presented to you by the Chief of our Mineral Resources Management Division, Mr. Bruce Thompson.

MR. THOMPSON: This is similar in the fact that we also, the staff recommendation to deny without prejudice an application for a mineral extraction lease of American Block Company for mineral extraction.

This applicant wanted to conduct mineral extraction of volcanic cinders in the desert. The staff, in looking at the site, it's a natural volcanic cinder cone. About half of it is in a BLM section, and half in the State section. In checking further, BLM has designated this in their management plan for a national scenic area. This would be called the Cinder Cone National Landmark area.

Because of this, Section 16's unique features, we thought this would be a situation where the application should be denied. BLM has indicated they have this on their list of acquisitions sometime in the future.

CHAIRMAN MCCARTHY: Any questions from Members of the Commission?

From the audience?

If not, recommendation adopted.

EXECUTIVE OFFICER WARREN: Before taking up Item
C39. Viceroy Gold, I would like to take up Item C20. Mr. Thompson will also take that one up. This is for technical amendments.

CHAIRMAN McCARTHY: For technical amendments.

MR. THOMPSON: Page 127, in the recommendation number two, in line 3, we would like to change PRC 2984 to 2894. A little typo.

Line 5, in place of the word tag, change it to the. The very last number in the paragraph, 2199, change that to 2894.

We got caught up with our word processing changes.

CHAIRMAN McCARTHY: Is there anything about those changes that we should know that we'll read about in page 1?

MR. THOMPSON: No.

CHAIRMAN McCARTHY: Any questions from Members of the Commission?

COMMISSIONER DWIGHT: I indicated previously that I could not vote on this one.

CHAIRMAN McCARTHY: All right. That will be so noted.

Commissioner Tucker and McCarthy approve as recommended.

What else besides 39?

EXECUTIVE OFFICER WARREN: That's it.

CHAIRMAN McCARTHY: 39.
EXECUTIVE OFFICER WARREN: Item 39, Viceroy Gold,
will be presented to you by Mr. Ron Small.

MR. SMALL: Ron Small, Staff Counsel with State
Lands Commission.

Viceroy Gold currently has an approved project for
a heap-leach mining operation on Federal lands in the Castle
Mountains, north of Needles, California. The project was
approved by the Bureau of Land Management in the first part
of November of this year, and the County of San Bernardino as
the lead agency under the Surface Mining Reclamation Act,
approved the project in September of this year.

They have an application before the Commission for
up to four water wells and a right of way for a water line to
connect those water wells with their adjacent water wells on
Federal land. It is the Commission's staff recommendation
that that application be denied without prejudice.

The Commission also approved the staff's selection
of Federal lands adjacent to the State school section in
August of this year, where the staff has submitted an
application to acquire the lands where the water wells are
located on Federal lands.

Staff's purpose of this selection is to acquire the
water rights necessary for the project so that we do not
piecemeal our negotiations with Viceroy. That is the basis
of our denial recommendation on the school lands section.
CHAIRMAN McCARTHY: Mr. Warren, do you have anything to add to define the purposes of staff's, Commission staff's action here?

EXECUTIVE OFFICER WARREN: Nothing further on this particular item, Mr. Chairman, except I may want to respond to testimony from at least two individuals who have indicated they wish to comment on this.

CHAIRMAN McCARTHY: Mr. Robert Anderson, of the Bureau of Land Management, welcome, Deputy State Director, Mineral Resources.

And we have Mr. Bill Tilden, who is representing Viceroy Gold Corporation.

Let's hear first from Mr. Anderson. You're both welcome to come up, please, and take a seat.

MR. ANDERSON: Thank you, Mr. Chairman. My name is Robert M. Anderson. I am Deputy State Director for Mineral Resources, BLM, here in Sacramento. I do have a short prepared statement that I would like to read.

The BLM is responsible for managing many natural resources on the 17.2 million acres of public land in California, including the mineral resources. In response to the intent of Congress in the 1976 Federal Land Policy and Management Act, the Bureau established a minerals management policy to actively encourage private enterprise in the development of a stable mineral industry and to do so in an
environmentally sound manner.

In the spirit of this policy and in accordance with the United States Mining Laws, BLM and San Bernardino County entered into an agreement on the processing of Viceroy's mining plan of operation for the Castle Mountain project. We worked diligently with environmental organizations, Federal and State agencies, other publics and Viceroy to ensure that the project would comply with all Federal and State laws.

In fact, comments submitted by the State Lands Commission on May 15, 1989, were incorporated in the Final Environmental Impact Statement for the project. We also developed innovative and unique measures to minimize environmental impacts and to ensure effective reclamation practices.

We support the project and feel that it strengthens the local economy and establishes a stronger tax base for the State of California.

It is my opinion that the mining claims and mill sites within the Castle Mountain project area are in conformance with the uses intended by the mining laws and associated case law.

That's the end of my statement.

CHAIRMAN McCARTHY: Thank you, Mr. Anderson.

Any questions of Mr. Anderson?

All right. Let's hear from Mr. Tilden.
MR. TILDEN: My name is Bill Tilden. I'm an attorney. I represent Viceroy Gold. I would like to go back just a little bit and give you a little bit of history on the project.

CHAIRMAN McCARTHY: Mr. Anderson, you may want to stay up here so that if we get into a discussion of this you can be involved.

MR. TILDEN: As indicated, this project is an open pit mine located in the east Mohave Scenic area. It's in East San Bernardino County. It's near Searchlight, Nevada.

The activities would disturb about 890 acres. Water for the project is to be supplied from what we refer to as the West Well Field, located about 12,000 feet from the project. The project requires about 450 gallons per minute for processing and dust control.

Ultimately, the project would employ about 150 individuals. It will be employing about 200 individuals during the construction phase.

The sales and use taxes generated from the county are somewhere in the nature of $600,000. An additional $400,000 a year will be generated in property taxes.

The company has spent about five years and $30 million coming to this point. Three-quarters of a million dollars have been spent on the well field that we're talking about today.
The status of the project is that it has received both state, local and county approvals necessary to move forward. As it is on State and Federal land, it required both an Environmental Impact Statement and an Environmental Impact Report.

Those reports were extremely complete. They looked at a broad category of items suggested by a broad category of participants in the process. The rcd is issued and is final, as was indicated a minute ago.

The CUP and reclamation plan have been approved and are now final. The U.S. Fish and Wildlife has issued an opinion of no jeopardy.

I think it's important to look at some of the comments made at the conclusion of the reclamation plan hearing in San Bernardino County. I will just give you a couple of them. BLM has already indicated its position so I won't repeat that one.

Jim Pompe, the Reclamation Program Manager for the State of California Division of Mines and Geology said at the hearing, we feel that this plan, referring to the reclamation plan, is the most well thought out reclamation plan we have reviewed for a mining operation in the desert area.

Debra Rheems, staff attorney for the Sierra Club Legal Defense Fund and representing the Wilderness Society, Sierra Club, the Desert Survivors, California Wilderness
Coalition, the Natural Resource Defense Council, the Desert Protection Council and the Citizens for Mohave National Park said, this county is about to approve a mining reclamation plan which is truly precedential and which will actually ensure that revegetation does occur. At this time, everyone in the environmental community is happy.

Mr. Teeters, Chairman of the San Bernardino County Planning Commission, after hearing a full day of comment on the matter, indicated in the conclusion, it's refreshing to have this kind of cooperation both on the part of those that work so hard in the protection of the environment and those who work so hard in the protection of economic interest, whether they are private or public. It's really an unusual kind of cooperation.

The matter was then unanimously passed.

It's important also to understand what this Commission is being asked to do today. First the Commission is being asked to authorize the staff to request reclassification for a portion of the East Mohave National Scenic area for State in lieu land selection, a step which is contrary to the general practices of eliminating State lands within National Scenic areas, National Monuments and National Parks.

Second, this Commission is asked to authorize the challenge of existing mill sites, mining claims and rights of
way. This is required because before the State filed its selection, on August 13 of this year, Viceroy had filed claims on the entire area, or, excuse me, on significant portions of the area that are requested for the selection.

BLM in a decision actually only issued yesterday rejected the State's selection on areas in conflict with the claims. In that decision BLM states, the pertinent laws and regulations contained in 43 CFR 2621 permit only lands that are unappropriated and non-mineral to be acquired by the State.

The land selected by the State, as described above, are encumbered by active mining claims and mill sites necessary for the approved operation of the Castle Mountain project. In order to continue to pursue the selection, the State must show that the claims located by Viceroy are invalid, otherwise it's appropriated ground and simply cannot be obtained.

Simply put, the claims are valid. The company has spent, as I indicated, almost $30 million on this property, a large portion of which is devoted to these mill site claims.

Mill sites for water pumps and wells are located in areas where the State in lieu land selection is requested. It is clear from a hundred years of case law that that type of use is a use which will justify a mill site claim.

The first case in that instance that I have
uncovered was in 1890, very clearly decided on that issue.
As recently as 1966 in a case called *Howard C. Brown*, that
same procedure was followed and approved. That was the Kaiser
Eagle Mountain Mine in Southern California. Same purpose.

The third thing that you’re being asked to modify
is the criteria and the manner in which selections are made.
The new method would encourage the practice of waiting until
the private sector has established the value of land, and
then the State would, quote, "select" critical portions or an
entire project so as either to obtain the land or reach a
forced compromise.

I think this is contrary to a basic State fairness
policy. This practice would thwart the free enterprise
system. It would discourage further development in the State
of California. It would result in further scarcity of
minerals and increase prices. It would eliminate significant
job opportunities both in this local area and throughout the
State, and would potentially affect revenue to the State from
its own lands.

In conclusion, the decisions you’re being asked to
make today are significant. If made as requested, they will
be met with intense opposition from Viceroy, from the
industry, and from the general public and will be contrary to
long-standing precedent and policy.

We ask that you either reject the requested action
at this time, or continue the matter until you can be fully
informed on the issue. Thank you.

CHAIRMAN MCCARTHY: Mr. Warren, you or members of
your staff wish to comment on any of the points Mr. Tilden or
Mr. Anderson made?

EXECUTIVE OFFICER WARREN: Perhaps Mr. Small might
join us here at the table. I do have some comments.

First of all, we would like to congratulate the
Bureau of Land Management on the thoroughness and efficiency
of its review of this project. As you know, the project’s
nature involves highly disruptive technologies, but both BLM
and the applicant in this instance showed a reasonable degree
of stewardship and responsibility, and responded well to
comments in the environment or CEQA process, and I think that
both should be commended on the manner in which this project
has been reviewed and approved.

We certainly, like BLM, the State Lands Commission
staff supports the project. We are not opposed to the
project.

We have a school land section proximate to the
milling operation. The project proponent seeks access to
that section for right of way and the access to groundwater.

As this process took form — that is the permit
that is before you on this Calendar Item. As this project
proceeded, we made a determination consistent with our
responsibilities to the State teachers of this State for an
opportunity to increase revenue from State school lands.

The Federal Government owes the State of California
of some 80,000 acres in lieu lands. That is lands that
the State did not receive from the Federal Government when
Sections 16 and 36 of each township were transferred to the
State because such Sections were used for other Federal
purposes. Therefore, we had the right to acquire lands from
BLM which are called in lieu land. That right was given to
us by Federal Statute, the Indemnity Selection Act.

Pursuant to the terms of that Federal Statute, we
made indemnity selections of property proximate to our
Section in the vicinity in order to acquire resources which
we felt would be useful to the project and which could be
used to benefit the State Teachers Retirement System. Those
indemnity selections are those about which the project
applicant has expressed concern.

We also disagree on one other point. We do
disagree on questions of fact and law. In the Notice we
received yesterday from BLM denying our indemnity selections,
we think that the law has been cited in that Notice and in
testimony today that is incorrect. Only part of the statutes
are referenced whereas a reading of the entire statute
involved shows that what the State has done is appropriate
under the law.
I would also just like to make this -- we think that our position based on fact, based a law is sustainable. We believe that it's appropriate and suitable to meet in furtherance of our responsibilities to State teachers, and further, if I may say so, on the grounds of equity, general equity considerations.

The project proponent is a foreign owned corporation which has come to Southern California for the purposes of extracting gold. It is doing so pursuant to the Federal Mineral Leasing Act of 1872. The provisions of which do not require any developer or mineral developer to pay any royalty to either the Federal Government or the host State Government. There will be no revenues to either the Federal Government or the State Government as a result of this project.

They saw an opportunity under our law, and they took it. We applaud them for it. That is true entrepreneurial spirit.

By the same token, we, the State Lands Commission staff, under the Indemnity Selection Act saw as fully complying with what the Federal law permits it to do. I think we did so in the same spirit as did the company.

Other than that, maybe Mr. Small would like to comment, but I would like to emphasize, for the record, that we are not opposed to this project. We think that given its
nature that it's a good project. We support it. We want to see it continue.

We would like to see it continue equitably and consistent with the rights of the State Lands Commission.

CHAIRMAN McCARTHY: Mr. Small.

MR. SMALL: Just a couple of comments. The mere fact that these lands are in the National Scenic area was not a basis for 3LM's denial of our indemnity selections.

In fact, the company has an application for patent on its gold mine in the BLM. The net result of that application would be a transfer of legal title of that property to Viceroy. BLM is faced with the decision to transfer ownership of its own property to the company at nominal cost.

So, I don't believe the mere fact that this project is in the National Scenic area will be a basis for BLM to make a decision since they are already authorizing activity in that area.

CHAIRMAN McCARTHY: Would you comment on that, Mr. Anderson?

MR. ANDERSON: The Federal Land Policy and Management Act has a provision for the California desert. It's in Section 601. It talks about continuing multiple use including mining in the desert.

Unless lands are withdrawn from mining, we invite
the public in to locate claims and make a discovery. That is a non-discretionary act on our part. We cannot say to a miner, no, you cannot stake your claim there, once the lands are open. If they are closed, of course, they can't come in.

By the very nature of a location, a discovery, they have the rights to continue on to patent or conveyance of the estate.

CHAIRMAN McCARTHY: But comment on the point that Mr. Small was making that title to these lands could be transferred to the applicant by BLM.

MR. ANDERSON: Yes.

Once a discovery is made and verified by BLM, we would pass title if they, in fact, applied for patent application.

CHAIRMAN McCARTHY: I think Mr. Small's point was in view of that strong potential occurrence, that BLM might not find it a great difference to figure out how some of these acres might be transferred to the State of California to correct the deficiency of the 80,000 acres owed.

MR. ANDERSON: I understand what you're saying. I guess I'm not in a position to answer that.

What we would have to do, our local area managers would have to look at the land and make a determination as to whether it's suitable for reclassification so that we can
accept in lieu selections.

CHAIRMAN McCARTHY: What time frame do you think might be required to make such review?

MR. ANDERSON: I don't know.

I would hate to commit our staff. They are over burdened now with projects. I can't really tell you.

CHAIRMAN McCARTHY: When did we get our first application to this Commission, Mr. Warren, to the BLM offices here in California attempting to resolve the 80,000 acre deficiency?

EXECUTIVE OFFICER WARREN: I would need assistance on this one.

MR. HIGHT: 1900?

MR. TROUT: For a number of years the Commission carried a balance of 100,000 acres, 100,000 to 130,000 acres of entitlement from the Federal Government. Over the last 15 years or so, we have worked very hard to reduce that, and have reduced it down to the 80,000 that Mr. Warren has referred to.

Of that 80,000, about 50,000, I believe, is mineral base, and 30,000 is non-mineral, or maybe I have it backwards. That's the status here.

What we're looking at is a developing spirit of cooperation between the State and the Federal Government to remove this entitlement and to satisfy the debt that is owed
the State.

The Bureau of Land Management has worked hard. They have transferred geothermal lands to State which have potential to produce revenue. They have assisted us in acquiring the forestry lands where that has been appropriate. We are working with them to meet their needs in terms of areas that they feel have wilderness or scenic qualities that they feel should be protected, should be in the Federal realm and making exchanges. The Commission in recent years approved several exchanges and transferred tens of thousands of acres to BLM in exchange for thousands of acres of revenue producing property.

It comes down to the spirit. The land is going to go out of Federal ownership in one basis or another. Equity and justice says that you transfer it to the State to satisfy this debt before you transfer it to a private owner.

We have been reducing this debt over a number of years. I don't want in any way to indicate that BLM is not cooperative. They are operating under Federal law. Viceroy is operating under Federal law. We, too, operate consistently under Federal law.

We need to take this entitlement and convert it to a revenue producing asset, in appropriate locations to the benefit of retired teachers. There are 120,000 in the State that are retired, and 300,000 plus teachers to which...
retirement will be coming. This is a significant group of
Californians.

MR. TILDEN: May I be heard on this point?

CHAIRMAN McCARTHY: Yes.

MR. TILDEN: It sounds to me like there are three
issues. The company finds itself in the middle of a very
difficult issue that State and BLM have been working with for
some years at this point.

The company is seeking to produce from water wells
located on claims located prior to the application of the
State for the lieu lands selection. That is a fundamental
issue that shouldn't be lost in the discussion. The
fundamental thing about that is that if those claims are
valid, there is nothing under Federal law which the State can
select within that ground area.

Although I have heard statements made by the State
representatives indicating that there is somewhere authority
for their proposition that water usage is not appropriate,
there is no indication in any of the treatise on this matter,
nor is there case law, that I am aware of, that would support
that position, nor have I heard any cited. That's a
fundamental issue.

The other item that I think is critical to all of
our resolution of this issue is an understanding, in my view,
if the State is going to see the lands developed, it's going
to have to do so in a context in which industry, who is going to be the ultimate payer of either the price here or the price elsewhere, industry is encouraged to act in such a way as to develop the funds that are necessary to pay the price.

If this kind of an activity is encouraged, the net result is that industry is going to look at California and say how in the world can we set up a practice of developing a piece of property and then have State of California come along at the last minute and say, oh, gee, you look like you have a nice project. I think we'll select this land, this land and this land, right at the last minute.

That leaves all projects that are going to be located on Federal land with a difficult project. They have to look then at other states or other localities outside of the State of California. I could not give a title opinion in the State of California to anyone with an unpatented mining claim in this point based on this kind of a decision which would allow them to go forward with any kind of financing or any kind of development of their project.

They would have to say, no, we don't have any land tenure guarantee.

EXECUTIVE OFFICER WARREN: We're not asking you to make this decision. We're asking you for the authority to make this point to the BLM appeals procedure.

If our claim for indemnity selection is improper,
they will tell us so, in which case we will withdraw.

We think under the law that our claim is valid.

We're asking you for permission to pursue that claim.

MR. ANDERSON: I would like to make one more point.

In terms of conveyance, when an application is made for mining claim for conveyance, it's restricted to that part of the claim or those claims that are actually mineralized, where the discovery has been made. It doesn't include the entire area. It's for specific claims where the mineral lies.

On mill sites, it's the same way. It's just for that five acres or part of that five acres that are necessary for, in this case, water use. You might envision thousands of claims out there, but, in fact, the only one's that can be patented are those that are mineralized.

CHAIRMAN McCARTHY: Any other comments?

COMMISSIONER TUCKER: Does anyone have a response to the point made by the attorney that people who are developing mineral interests would be hesitant to do so if they felt that the State saw their efforts would be productive, we would come in and say we would like to file an indemnity claim as to that property?

MR. SMALL: Actually, I have a couple of comments.

Mining companies, like oil companies, are very competitive. My few friends that I know in the mining
industry make a practice out of looking for mining areas where they believe the mining claims themselves are weak, and they can go do their own claims, or other title weaknesses where they can gain an advantage.

I won't make a presumption as to whether Viceroy practices that way, but I think any competitive company or enterprise looks for opportunities where they can make an investment.

I, as a mineral lawyer, would never say that an unpatented mining claim is such a perfected title interest that that property is totally protected. The law is clear that an unpatented mining claim is always subject to challenge.

BLM has a long history of challenging unpatented mining claims for failure of discovery. They have done it in the past and will continue to do it in the future for their own management practices.

What we're doing here is using the Federal law and looking at the title interests that Viceroy has, and we are saying that we think there are some weaknesses there, and we can acquire that property. They may disagree with us, which I would expect them to. I think we have a sufficient claim to proceed.

Whether companies are going to come in and say that if the State practices business like this we aren't going to
do business in that State, they will go where the money is.
If they think there is a viable project there, and they can
cut an economic arrangement with the State, assuming that we
got involved in their project, they would come forward.

We do not have enough history on this kind of
project to say that we’re going to be so outlandish in our
economic negotiations that the project becomes infeasible.

COMMISSIONER DWIGHT: I can understand Mr. Tilden’s
point of view. He doesn’t have to pay anything to the
Federal Government to perform, royalties or share of the
profits, and that is why he would want to pursue that.

Mr. Tilden, you indicated that the company spent
approximately $40 million?

MR. TILDEN: $30 million, sir.

CHAIRMAN McCARTHY: It’s a sizable investment.
What do you estimate the return to be from the investigation
the applicant has undertaken so far? What is the potential
return be for gold extracted under current world prices from
the lands involved here?

MR. TILDEN: I don’t mean to be evasive, but that’s
an extremely difficult question. The price of gold is very
fluctuating. The ability of obtaining it is subject to a lot
of criteria. We have tried to scientifically eliminate as
many variables as we can.

Let me answer it in a broad, general category,
which is all I can do. Most mining decision makers look
at investments in mining properties from the context that if
they cannot obtain at least a 15 percent return on
investment, then it is simply not worth the risk.

Depending on what the price of gold does and cost
of operating does, it would be either less or more than
that. It should be in that range.

The reaction that Mr. Small makes to my comment, I
would like to make one --

CHAIRMAN McCarthy: That's not a complete answer to
the question. Perhaps the answer is impossible for you to
give.

Looking at gold prices on the world market,
averaged for the last ten years, or cut it by 20 percent,
from the investigation that the company has done, what sort
of return do you think is probable on this land for the
company?

MR. TILDEN: I really don't have a good answer for
you. I could only tell you that I think it would be in the
range of 15 percent ROI.

CHAIRMAN McCarthy: They have investigated $30
million over five years because they are confident there
would be at least a 15 percent return?

MR. TILDEN: Again, I think that their optimism
would be that there would be more. Their concern would be
that it would be less. Their hope is that that would be an average of a number of projects, yes.

I apologize for the evasiveness of that answer.

It's very difficult to pin an answer to that down.

CHAIRMAN McCARTHY: You're representing your company. We understand that. You have to put forward your best argument. Our problem is that we want your project to go forward. On the other hand, there are 120,000 retired teachers in this State who have devoted their lives to educating the children of California, and these lands, these school grant lands, impose a trust responsibility on us to generate funds to make it possible for these 120,000 teachers, many of whom come from San Bernardino County schools to have some reasonable retirement possibility.

That's one of the factors that must be a consideration for us. I know not for you. It must be for us. That's the dilemma that we face here.

MR. TILDEN: It hits me directly. I know very closely some of the retired teachers you are talking about. I am raising two of them who are just going through school, not yet retired, but they are coming along.

The gentleman who just approached me is Mr. Ross Fitzpatrick. He's the President of Viceroy Gold. If you would like to direct your question directly to him, perhaps he could give you a more responsive answer than I have.
CHAIRMAN McCARTHY: Fine. Step forward and identify yourself.

MR. FITZPATRICK: I am Ross Fitzpatrick, and President of Viceroy Gold.

Quite specific to your question, I believe that in the past ten years the average price of gold has been $370 per ounce. I can tell you unequivocally that our project with the funds that we have spent now, which total approximately $30 million, and the additional capital cost that we will incur to put the project into production, we would receive much less than a 15-percent rate of return.

To proceed with a project like this in hopes that price of gold remains stable or improve, unequivocally, we would, at $370 per ounce for gold, would not make a fifteen-percent rate of return.

I would like to respond --

CHAIRMAN McCARTHY: What is your average rate of return for your other gold mining investments in other states in America?

MR. FITZPATRICK: This is a specific project for Viceroy Gold. It's the only project which Viceroy Gold has, and we have developed it from the inception, which I think, if I may, respond to an earlier comment that was made, Viceroy Gold is a Delaware Corporation. It was established to develop this project.
It's true that it is owned by a Canadian incorporated company. That Canadian incorporated company is a publicly traded company on the Toronto Stock Exchange. The ownership of that company, I cannot be exact, but what would be American ownership, Canadian ownership and European ownership.

Funds that have been expended to date have been expended in the United States. We have on the average have probably employed 25 or 30 people during this development stage. As was mentioned, we will employ 200 people for the construction stage, and 150 people on a continuous basis.

That is in an area where there is an unemployment rate of approximately 20 percent. The tax legislation between our country, Canada, I'm Canadian, and the United States, it makes no sense whatsoever to bring the profits from an operation like this back to Canada. Those profits that we make from this project, whether it's 15 percent or something less, or if we get lucky and the price of gold gets higher, those profits would be reinvested in the United States.

CHAIRMAN McCARTHY: Sir, we're not raising a problem with Canadian ownership. There are lots of Canadian investment in California and a lot of California investment in Canada. At least in my mind, that's not a consideration.

All of the things that you have mentioned are
pursuasive, but try to appreciate after several years of
evaluatin your money into this project, we are trying to
figure out how do expedite the project going forward and at
the same time fulfill our obligation to the retired teachers
in the State, which is what we are supposed to be doing.

Part of that seems logically, to us, to be tied
with finally resolving with the people at BLM the question of
the 80,000 acres. It may be that it can be taken care of in
some other way. We're open to answers from our friends at BLM
on the question.

We see these as logically connected together. Nor
do we see it appropriate to have any undue delay. You have
already invested five years of your time. We would like to
move forward expeditiously resolving these connected issues,
in a matter of weeks from our point of view.

Any other comments or questions from the
Commission?

Any closing?

Did we give you every opportunity? Did you have any
final point?

Have you made your comments? Mr. Warren, do you or
any of your staff have any final comments?

EXECUTIVE OFFICER WARREN: Nothing further.

CHAIRMAN McCARTHY: Anyone else in the audience
have a comment on Item 39?
MR. FITZPATRICK: I would like to say that we proceeded with legal advice as to how to locate claims. We located claims whether mineral claims or mill site claims in an area which was Federal land, which was open to claim staking.

We did it correctly. We sought legal advice. We sought legal opinion on our claims. We needed that in order to do financing. We now find ourselves in a position where a State institution has said we are going to question a hundred years of legal precedent in establishing mining claims. That is after we have investigated $30 million. Not before.

After.

After we have spent $30,000 in consulting fees and going through an EIR process to establish and, I think that it’s now considered our reclamation plan and EIS is a state of art reclamation plan. As I mention to you, the project now doesn’t meet conventional return on investment standards, and we find ourselves in a place where someone, a State organization, has come forward and said, we think that we should have a claim on those claims that you already have. That gives us difficulty in terms of developing and further developing our project and financing it.

CHAIRMAN McCARTHY: You have done everything correctly in dealing with the Federally owned and managed lands, sir.
I guess the only reason that we have this issue before us today is now you're dealing with some State owned and managed land.

MR. FITZPATRICK: No, I don't think so.

Our water well field is in Federally owned land.

The State is attempting to obtain that land under an in lieu selection.

I want to make it very clear, our water field is on Federal land. We properly occupy that Federal land. It's not State land. Our right of ways are on Federal land. The State is making an in lieu selection to take land which is presently properly staked for our purposes away from the project.

CHAIRMAN McCARTHY: The issue as described to us by our staff is that this is an application for water wells, a power line and a right of way across State school land.

MR. FITZPATRICK: I'm going to ask Mr. Tilden to respond.

MR. TILDEN: The issue in front of you is slightly more complex than that. There is that issue, yes.

There is a well located on State land which has been applied for. There is a right of way leading to that well that has been applied for. At one time the access to some of the wells that are located on Federal land was to be accessed through the State land. That is no longer the
access route.

The well field which is being sought to be obtained by the State, by virtue of the lieu land selection, is entirely on Federal land and on the claims.

CHAIRMAN McCARTHY: We understand that. I think you understood the point that I was making to Mr. Fitzpatrick.

MR. TILDEN: I do.

There is that split.

CHAIRMAN McCARTHY: All right.

Commissioner Tucker.

COMMISSIONER TUCKER: I'm really uncomfortable with this. It seems to me that if the representation is correct, that they have gone through everything one could reasonably anticipate as far as the requirements, and they have met and satisfied those requirements, and then we pop up and say, well, we have a claim. We would like to assert a claim to your -- not their property, but property their site, not because we are contending that it's historic State property, which obviously arises from time to time, but because we feel that in our role as trustees it would be nice to share a portion of the profit of those lands that they have identified and made an investment in.

To delay the project in order make those claims is something that I am uncomfortable with. I would have a
question as to whether or not we can continue to make our
claims and at the same time give them the rights of way that
they request.

I assume that whatever fee we would have or would
request for them for the rights of way we would consider that
to be a fair return, I take it, setting aside all these other
issues. Suppose they just came in and said we need a right
of way, and we say, yes, we normally grant that, whatever we
are going to charge for that is normal fee. We're getting a
reasonable return on that.

If we have some other claim, I do not understand
why we do not assert that claim. Let them proceed with the
project and give them the right of ways because that's what
we normally would do, and then if our claim is successful, I
assume then that we would have a right to damages or right to
back profits or right to something, that we could recover.

I guess I'm not clear as to why we have to make
them wait while we pursue the discussions and assert a claim
in our role as trustees.

EXECUTIVE OFFICER WARREN: Point one, I think we
can assure the Commission that the staff will not -- will
move aggressively in resolving the validity of its indemnity
selection.

There is the Notice, the time period for resolving
such disputes was triggered by receipt by us of the Notice of
Determination from BLM. We have sixty days.

MR. SMALL: It's actually 30 but we're ready to go after the first of the year. We reached an agreement with Viceroy that we would not file our contest to the mill sites until after the first of the year, pursuant to their express request we agreed not to do that.

EXECUTIVE OFFICER WARREN: We're ready to proceed.

COMMISSIONER TUCKER: We're ready to proceed, but that doesn't mean that we'll get a decision expeditiously. As I understand it, we have not precluded ourselves from going to Federal court to challenge whatever decision might be made if we disagree with it in the appeals process. That is not three months from now.

EXECUTIVE OFFICER WARREN: Your point is taken, but I think your recommendation deserves exploration. I think that what you propose that there be an interim accommodation for State Lands and Viceroy Gold could be negotiated so that the project is not postponed and so that an agreement would be conditioned on a final resolution of the legal issue at hand.

I would be willing to, I would invite Viceroy Gold to discuss such arrangements with us straight away.

COMMISSIONER TUCKER: We're talking about granting the rights of way that are requested.

MR. SMALL: Commissioner Tucker, the rights of way
are only for the water pipeline connected to the water wells that would be drilled on the school section. We have not negotiated with them, we have not set a price, nothing on the school section. We have no evidence at this point in time that the issuance of a lease on the school section is absolutely critical and necessary for their project to go forward.

What is critical for them for their project to go forward is certainty as to the title of the lands we have selected. That is the process that will take a lot longer.

COMMISSIONER TUCKER: That's not what is before us. Haven't they filed -- they are not asking us to quiet title and never claim that we have any or never assert that we have never claimed anything. That's not the Calendar Item. The Calendar Item before us, as I understand it, is they are requesting a lease and certain rights of way.

MR. SMALL: On the school section for water wells.

The right of way is not access to their project.

COMMISSIONER TUCKER: Normally, wouldn't we grant these leases if they wanted to drill a water well and they are going to pay us for it? Again in our role as trustee, these leases, we want these leases to make money. If somebody comes along and says, hey, I'll pay you to do something on the State lands, we would say fine, as long as it's not environmentally detrimental, et cetera.
MR. SMALL: In the past we have.

To this date we have not issued a lease for a water well for mining extraction purposes to the best of my knowledge. I don't know what kind of price we're going to come up with on it.

The problem we have here, assuming we are successful on our challenge on the mill sites and we are successful in acquiring the lands we have selected for indemnity selections, our goal is to have one lease that covers all the property, not piecemeal a lease here and a lease there.

It's very difficult to negotiate with a party across the table when they already have a piece of the pie.

MR. TILDEN: May I be heard on the subject?

Two things. First, Mr. Tucker, you have identified something.

The staff requested action, in number six, asks you to authorize them to pursue all remedies, including litigation to challenge the legality of any rights of way or other approvals on lands selected by the Commission.

The import of that is to challenge the claims located on the adjacent Federal sections and continue to pursue the acquisition of those sections by the State as a lieu land selection.

The doing of that is going to involve a filing of
an IBLA, an Interior Board of Land Appeals, appeal from the
current decision, which takes approximately two years, unless
it’s expedited, then it may take something in the matter of
months less, maybe a year and a half.

That kind of a time frame is going to be very
detrimental to the company. That means they are going to be
uncertain concerning their water source for a year and a half
or two years.

The well that is located on State land is important
to the company. It happens that that well is one of the best
producers out of the wells drilled. It would probably be one
of the wells that the company would use for a bulk of its
water if it’s available.

CHAIRMAN MCCARTHY: Can you proceed with this
project without the State’s water wells?

MR. TILDEN: Yes. Provided the State doesn’t put
us in the position where we do not have secure title to those
wells.

CHAIRMAN MCCARTHY: If you do not have access,
Mr. Fitzpatrick mentioned that there is water you can drill
for on Federal land.

MR. TILDEN: We have drilled for it.

CHAIRMAN MCCARTHY: If we say go ahead with the
project, just don’t count on operating on this State land, on
obtaining State water or rights of way across State land,
just complete your project on Federal land, can you go ahead and do that?

MR. TILDEN: Yes, we can.

Provided that you do not take the position that somehow you’re going to assert a State lieu land selection covering that very property --

CHAIRMAN McCARTHY: But you can do it without State water?

MR. TILDEN: That is correct.

EXECUTIVE OFFICER WARREN: Which raises a point we have not discussed in terms of our negotiating stance with the company over the water well on our school land and our right of way on our school land.

They have come to us, and we have not negotiated the terms of that lease, by the way. They wanted access to our well on State lands and a direct right of way to the site for the pipeline, also on State land.

Then we got to the point of negotiation and they found that the negotiations were unacceptable and said we’ll find water on the Federal land up here and instead of taking the right of way across State land, we’re going to build the pipeline at a right angle and bypass you.

They went to Federal lands for a number of reasons. One of which was to strengthen their bargaining position with us in terms of what they were trying to
acquire, the school lands parcel. Whereupon, I'm not sure
that it followed in this sequence, but it seems to me it's
suitable for us to take a look at what they have done and see
if we have a superior claim to that in order to bypass
negotiations with us.

They would certainly like to negotiate with us
if we were willing to relinquish our indemnity selection
claim. Of course, we have no bargaining position, and they
know that.

Now, what we're saying is we will bargain with you
either now or later, but we will bargain with you in terms of
what we feel is a superior claim to the Federal lands as well
as our ownership of the school land parcel.

MR. TILDEN: You're correct in part but your
sequence is wrong.

The well on the state land was not drilled first.
It was drilled in a series of drillings. It was drilled
during the series. It was not an instance where we found
water on the State land and then tried to negotiate with the
State and then didn't do so and then went outside of it.

Actually, the water well drilled on the State land
was drilled in error because of a surveying problem in the
field. It was never intended to be drilled on State land
because we thought we could get the water outside of the
State land and not have to deal with the State.
Which is partly something that I think that the State should think more about in the sense of whether or not the State is acting in such a tough way that they are discouraging industry from coming into California and dealing with the State.

CHAIRMAN McCARTHY: We appreciate your concern about our broader posture on industry. Let's stick with the applicant before us.

COMMISSIONER DWIGHT: I think that the pivotal issue is a fairness issue and goes to the timing of the claims on the Federal land. If, as you have suggested, and I have not heard any quarrel, if you went about this in the proper orderly and legal way, then the question is is the State coming in after the fact, and you suggested that is what we're doing, and now that you have created some value in the land we decided we want it.

I'm afraid that the issue is sufficiently complex that we cannot reach a conclusion on it today. Clearly the State has something that the company would like, and that is the well on the State land. The company appears to have something that the State would like, and that is the Federal land which you also have wells on. I, like Mr. Tucker, I'm uncomfortable in asserting the State claim in an extremely vigorous way. I'm not going to vote today.

I'm taken by the validity in some of the company's
claim. I won't be back for the next meeting, so my views may
be immaterial.

It seems to me that you guys ought to get back to
the bargaining table and work something out that everybody
agrees is reasonable and then bring it back here. Quit
messing around with appeals and delays and all of this other
stuff.

My suggestion would be to table the whole thing in
hopes that by the next meeting this all can be worked out.

The State has the right to do what is suggested,
and I think that we could probably prevail, but to whose
benefit. Not the companies benefit. If we did take that
stance, there is some serious question as to whether we would
be acting in good faith. I suggest they go back and work
things out.

EXECUTIVE OFFICER WARREN: In an attempt to resolve
this issue, I would not object to continuing the Item, all
parts of the Item for say a period of 60 days provide that
permission is given for us to pursue the remedies available
to determine the validity of our in lieu selection. That
would also give us -- so that would mean we would continue
with the process of proving the validity of our indemnity
selection. It would give us an opportunity to negotiate with
the company on rights of way and access to water.

CHAIRMAN MCCARTHY: Does Mr. Anderson or Mr. Tilden
see any problem with that?

MR. TILDEN: Well, what that means, if I understand what is being stated, is that they would file an appeal with respect to the Federal decision, putting us squarely in the uncertainty which this whole procedure was designed to put us in so that we would be in an unfair bargaining position.

I think what that does is exactly --

CHAIRMAN McCARTHY: May I ask a question?

You sound like you have done a thorough job of investigating this. You knew that the State Lands Commission would be involved at some point. Five years have gone by since applicant began this process.

What was the earliest date that you were in contact with this Commission staff?

MR. TILDEN: I would have to look back. I would suspect that we have been in contact in the nature of two years.


COMMISSIONER TUCKER: The Lands Commission commented on the EIR.

CHAIRMAN McCARTHY: On the issue of the EIR.

When did you give is an application to take water from State land?


CHAIRMAN McCARTHY: Were you concerned that you did
not get the issue resolved?

MR. TILDEN: The difficulty is that there are two issues. The issue with respect to the lieu land selection we have never been in contact with the State with until recently when that issue was raised directly.

We had no idea that the State was going to take that position with respect to the Federal lands.

CHAIRMAN McCARTHY: I understand that. That's not the question I asked.

I'm talking about your access to this water which you describe as rather important to the overall project. Weren't you concerned about resolving that issue?

MR. TILDEN: We knew as part of the issuance of that authority that you were going to have to do a CEQA compliance. The CEQA compliance was completed in connection with the application with County of San Bernardino, which has been completed as of September.

This is the first time frame in which the State could act appropriately under those requirements. I do not think that the State or the company has delayed.

CHAIRMAN McCARTHY: This is not a minor environmental issue.

COMMISSIONER TUCKER: They have been through the environmental issue.

CHAIRMAN McCARTHY: I'm aware of that. I am
suggesting that it would have been appropriate here for some negotiations to have been presented on the issue of access to this State land water if this is very material to the overall project. I'm trying to figure out why that hasn't happened before now.

MR. TILDEN: We were given a letter by the State Lands Commission identifying our application as being in the State and until such time as the CEQA process was completed we couldn't process and complete the application at the State level.

CHAIRMAN McCARTHY: When was the CEQA process completed?

MR. TILDEN: In September.

MR. FITZPATRICK: If I may add, when we proceeded to the drill the walls to establish water, we proceeded to drill on Federal land. It was in error, by surveying error, that this well in question on the State land was drilled.

We had established sufficient water for the purposes of our operation on Federal land under which, at a location that we had properly staked and we believed we had proper title to it.

It's only within the last week or so that we have now heard from the State Lands who are challenging the validity of the claims that we have staked. We staked those claims back in '85, '86 and '88, to the large part. We had
established our water source.

Now what happened is the State has come and said we challenge the validity of your claims, your claims that you have staked on Federal lands. That's what is at issue here.

CHAIRMAN McCARTHY: You established your title to the water that is under State land?

MR. FITZPATRICK: No federal.

CHAIRMAN McCARTHY: But that's the in lieu question that you're raising.

My point was limited to what efforts you made in timely fashion to resolve the issue of access, the water under the State land, which is not an in lieu question.

MR. TILDEN: We made the application.

Had there not been the error in the drilling, we would not have known there was water under the State land.

CHAIRMAN McCARTHY: You have been pursuing this for five years. Your are stipulating that the water on the State land is a very significant factor in the overall success of the project?

MR. TILDEN: No.

CHAIRMAN McCARTHY: You're not stipulating that? You can do it without the State water?

MR. TILDEN: We can do it without the State water.

CHAIRMAN McCARTHY: You can drill through Federal water.
MR. TILDEN: We have already established the wells which will provide us sufficient water.

CHAIRMAN MCCARTHY: So, you do not need the wells on the State land?

MR. TILDEN: We don't need them. The well that is located on State land -- all wells are not created equal, as I'm sure you know. This particular well is a good well. It produces a high volume of good water. We would use it all other things being equal.

MR. FITZPATRICK: It was by accident that we discovered the water on the State land. It was by determination where we discovered the water on the Federal land and staked our claims to do so.

CHAIRMAN MCCARTHY: I understand one Commissioner wants to postpone this for a couple of months. What does the other Commissioner want to do?

COMMISSIONER TUCKER: I'm not sure that I'm comfortable at this point with the clamour. I'm torn. Our obligation as trustees to the retired teachers means that we should vigorously identify sources of revenue for that fund. I would be interested in hearing, and we do not have to do it here but some other place and take some time, but response to the claim that we are establishing policy whereby we're going to go around and wait for other people to identify a mineral resource and make an investment.
and then if we think it’s productive assert a claim to it.

Not as State Lands. I’m always comfortable with that.

If somebody stumbled on our lands, that’s their
problem, and they make an investment, too bad.

If I understand the description, it is really
different. This is our choice. If we were not making this
indemnity selection assertion, we would have no other claim
to that, forgetting the wells, to this property. They would
not have a cloud in effect or their claim but for our
indemnity selection assertion. I’m concerned about that.

Maybe this is what we might want to do for teachers
retirement fund to go around the State and look for places
where claims have been developed and then make assertions.

Maybe we have done that all along, and I am not
aware. It’s a significant policy and should be addressed as
a policy, if that’s what we want to do as a policy, then we
will put the mining people on notice.

EXECUTIVE OFFICER WAPREN: Not just mining people.

You make the case, this is a policy decision. I
think it’s a policy decision of such importance that it
transcends the particular project before you. The policy
decision involves this, as you pointed out, indemnity
selections of some 80,000 acres to make. We have been and
are in the process of identifying acres that have potential
of providing to the teachers of the State the greatest
return.

Sometimes the means by which we undertake that process are several. One of the means includes identifying what activities are taking place on Federal lands and determining if there are any opportunities to exercise indemnity selection which will be of benefit to the teachers. This happens to be one. There may be others like the location of a freeway interchange, like the creation of a shopping mall, like the location of a plant. Whenever those activities take place on BLM lands, or proposed for BLM land, I think we have a very deep responsibility to the teachers to look at the activities taking place and determine if there are opportunities for indemnity selections.

That's what we did here. They complain about coming in late in the hour. Several things had to be done. We did not think there was a project here because until the CEQA process was completed sometime in September. We thought there would be extended litigation because of the actions by the environmental groups. The environmental groups and the project proponent only two weeks ago arrived at an agreement removing environmental opposition in exchange for technical changes and a $2 or $3 million environmental mitigation fund paid to the environmental organizations which either had or threatened the action. They got money.

Now, it was only late in the CEQA process that we
recognized that the project was viable. We filed our
indemnity selections in August. That was the earliest we
could have. As early as we recognized the revenue potential,
we acted.

COMMISSIONER TUCKER: I agree that there are a lot
of applications for in this policy. It seems to me, as far
as I am aware, that mining is in a sense a anomalous case
because of the fact that the other situations that you talk
about, shopping centers, et cetera, BLM has a project on the
land. Contractor comes to them and says I want to build on
your land. I'll pay you so uch. We come along and make an
indemnity selection, that contractor doesn't care.
Presumably the result of it is that BLM says pay your rent to
the teachers retirement rather than the Federal Government.
We simply have only switched title owners.
Here it is anomalous because of the fact that they
don't pay anything for the claim. By switching title, we
change the rules of the game far down the stream of their
investment. So that the contractor who is building the
shopping center understands what his rent is and can make an
economic decision, based upon that to whether it's a viable
project or not, it would be like they are turning over to us,
and we are allowed to tell the contractor, the rent is
doubled or tripled and quadrupled or whatever. This
situation is different than other indemnity selections in
that it's a change of the rules for the person who is
operating the business. I do not know how much of an
economic change that it is.

That's the question that I have, what is the
economic impact of our asserted claim on what they are doing.
If we were successful and they went ahead and they were
successful, what would we get out of it under normal
circumstances? I do not know what the answer is to that.

CHAIRMAN MCCARTHY: I think that the company
anticipated that they do not have to pay anything to the
Federal Government. I think that the thought that crosses
their mind is that the State of California would ask for
something, and whatever the something is is more than the
Federal Government is obtaining from them.

COMMISSIONER TUCKER: What royalty do we get from
any State teachers land that is being mined?

MR. HIGHT: Ten percent of the value of
processing.

The issue is the amount that we charge for the
water on the State land and the indemnity of the acquired
land. We do not have a number. So have not done the
research to figure that out.

CHAIRMAN MCCARTHY: That could be done fairly
quickly.

MR. TILLEN: Is there no similar situation where
the State is selling water? We're not talking about selling
gc'1 here.

EXECUTIVE OFFICER WARREN: In California it's
gold.

COMMISSIONER TUCKER: Other state agencies sell
water. We don't.

MR. STEVENS: Mr. Chairman, I apologize for coming
in late on this situation. I think that there are a couple
of questions that we could raise to Mr. Anderson that might
help us define and clarify the status of the State's
indemnity claims and perhaps resolve this within a reasonably
short time.

Basically, I would like to know whether the State's
claim was rejected solely on the grounds of prior
appropriation?

MR. ANDERSON: Yes. As far as I know, but I admit
that that is not my area of expertise.

I'm in the minerals area. As far as I know, the
decision is before you, and that's what it says.

MR. STEVENS: I'm sorry. It wasn't before me.
The prior appropriation was based on mill site or
mining claims.

MR. ANDERSON: Both, as I understand.

MR. STEVENS: On the same property.

Was this property characterized as mineral?
MR. TILDEN: Let me correct one thing.

There are two sections involved here, Section 9 and the other is Section 15.

Section 9 there are only mill sites located. That is where the well field, half of it, is. Section 15 in the west half, there are mill sites and mining claims.

MR. STEVENS: Mr. Anderson has indicated that the patent would be only issued with respect to the portion of the Section which was subject to the mining claim or portion subject to the mill site claim.

MR. TILDEN: If patent were applied for on a mill site claim, the law says that you can obtain up to five acres, which means they can patent you whatever it is you are actually putting to use. In a mining claim, you would be given up to 20 acres on a load claim, and it doesn't matter about the use in that instance. It has to do with discovery test.

MR. STEVENS: Both these Sections were characterized as mineral in nature by the Bureau.

MR. ANDERSON: No. We ordinarily do not verify mineral, non-mineral until there is a patent application.

We have 160,000 claims of record in the State. We have over 1500 mining operations of one kind or another. We simply do not verify until there is a conflict with the BLM program or a patent application.
MR. STEVENS: None of the basis of denial was made on the basis that the State lands in place were not mineral in nature and the lands claimed were?

MR. ANDERSON: That's right.

MR. STEVENS: One additional question of both of you. I have not had an opportunity to review the IBLA procedure.

Is it possible to stipulate to waiver of filing within the requisite period of an IBLA appeal? Could we avoid the necessity to go forward and file and press this claim immediately?

MR. ANDERSON: Are you asking for an extension of the thirty-day time period?

CHAIRMAN McCARTHY: To avoid the year and a half procedure.

MR. ANDERSON: We could ask for an expedited hearing. It would be a hearing before an administrative law judge, which are sometimes granted.

MR. STEVENS: Would the IBLA lose jurisdiction if we failed to file an appeal within the requisite thirty-day period? If there was a stipulation? Can you waive the filing period.

MR. TILDEN: I do not have an answer. I have never been in an instance where that has been pursued.
Generally, my understanding would be no.

MR. STEVENS: You indicate a concern as to the presence of an appeal on the record. I was just exploring if this could be avoided.

MR. TILDEN: If it's an item of concern to the State, there is the existence of both mill sites and mining claims in the same area, that is a common practice done early in operations.

At this point in time, the company is convinced that there is no mineral in the west half of Section 15. If it clarifies the State's thinking on it, they would relinquish any mining claims which exist in that area. They have now done sufficient drilling to, it's what we call condemnation drilling, has not shown any potential of mineral resource there so those claims would be dropped.

CHAIRMAN McCARTHY: Final comments?

EXECUTIVE OFFICER WARREN: The issue is before you and well understood.

CHAIRMAN McCARTHY: All right. There are two votes to postpone the issue for sixty days.

COMMISSIONER TUCKER: I think sixty days is a problem though. Isn't that what you were saying?

We are meeting the third or fourth or something.

That's within the thirty days.

I would suggest to wait until the next meeting to
see if some progress can be made. Obviously we wish the
compny and BLM and Lands Commission staff to come to some
accommodation.

We are not in the business of putting business out
of business. We do have the obligation to the teachers to
try to get them economic return. I think that all the
parties have to recognize that we have this dual concern and
hopefully there is a way to balance them.

CHAIRMAN McCARTHY: The thirty-day obligation
pertains to what Sections of the six recommendations?

MR. HIGHT: 6, 7, 8 and 9.

EXECUTIVE OFFICER WARREN: Essentially, 6, 7, 8 and
9 would permit us to take the steps necessary within the time
available to establish the validity of our indemnity
selection or determine the validity of our indemnity
selection.

CHAIRMAN McCARTHY: Is it for us to act on the
first five today?

COMMISSIONER TUCKER: I think we ought to postpone
the whole thing.

COMMISSIONER DWIGHT: The Commission staff wanted
to act on a whole not a piece meal.

EXECUTIVE OFFICER WARREN: We have thirty days to
establish validity of our patent, of our selection and by
posting this could jeopardize our ability to do that
without allowing us the authority to pursue that.

COMMISSIONER TUCKER: I'm not ready for that. I think that everyone should be talking somewhere.

EXECUTIVE OFFICER WARREN: While we are talking, we need to take the steps necessary.

COMMISSIONER TUCKER: My understanding is we can do that after the decision is made in the next Commission hearing. You will have several days to file an appeal.

MR. ANDERSON: May I make a suggestion? The State Director has the authority to extend the thirty-day period with good reason. I cannot make the decision but I could make the recommendation to him to have it extended.

COMMISSIONER TUCKER: My suggestion is to come back and have this resolved by the third, and if not we have to take action. Viceroy needs to understand that one of the actions may be to file these claims.

It seems to me that everyone ought to be negotiating because there is uncertainty here, and we're not going to relieve you from that uncertainty at this point. It should cause everyone to work something out.

If not, we'll have to make a decision.

COMMISSIONER DWIGHT: That would very well stand.

CHAIRMAN MCCARTHY: This matter is tabled until the next meeting of this Commission. Thank you, gentlemen.

EXECUTIVE OFFICER WARREN: That concludes the
calendar. Thank you.

(Thereupon the meeting was adjourned at 1:35 p.m.)

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CERTIFICATE OF SHORTHAND REPORTER

I, VICKI L. MEDEIROS, a Certified Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person therein; that the foregoing hearing was reported in shorthand by me, Vicki L. Medeiros, 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 hearing nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of December, 1990.

VICKI L. MEDEIROS
Certified Shorthand Reporter
License No. 7871