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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

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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

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PROCEEDINGS

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3 CHAIRMAN McCARTHY: Good morning, ladies and
4 gentlemen. I am Leo McCarthy. On my left is Commissioner
5 Jim Dwight, representing the Department of Finance. To my
6 right is Commissioner Jim Tucker, representing State
7 Controller Gray Davis.

8 Minutes of the last Meeting are approved as read.

9 We used to do that around here, just restoring an
10 old habit.

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

13 EXECUTIVE OFFICER WARREN: Items number 9, numbers
14 28, 33, 30 and 32, those are to be removed from the Consent
15 Calendar.

16 Consent Calendar Item Number 39, Mr. Chairman --

17 CHAIRMAN McCARTHY: Did everyone in the audience
18 understand that the Consent Items taken off Consent are 9,
19 28, 30, 32, 33, 41, 42 and 46. That is what I was just
20 handed.

21 Pulled from the file?

22 EXECUTIVE OFFICER WARREN: Pulled from the file.

23 CHAIRMAN McCARTHY: 39 is put on the Regular
24 Calendar.

25 Okay. We have it.

1 Any questions on the remainder of the Consent
2 Calendar?

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

6 CHAIRMAN MCCARTHY: All right. Let's have that
7 recorded.

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

13 CHAIRMAN MCCARTHY: Take it off Consent and put it
14 in the Regular Calendar, and you can put in the technical
15 amendments at that point and we will pass on it.

16 What remains of the Consent Calendar, any other
17 questions?

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

20 Let's turn to the Regular Calendar now.

21 Mr. Warren.

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

25 MR. KILEY: Mr. Chairman and Commissioners, this

1 particular item is to allow Wickland Oil Company to encumber
2 a lease, an additional lease, which the Commission has leased
3 to them, at the Selby site in Contra Costa County.

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

11 CHAIRMAN MCCARTHY: Any questions by
12 Commissioners?

13 Questions by the audience on Item 43?

14 If not, the recommendation is adopted.

15 Next.

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

19 MR. STEVENSON: Good morning, Commissioners. Item
20 Number 44 involves Ball Ranch, a title settlement agreement
21 in rural Fresno County affecting a parcel of approximately
22 592 acres, about three miles downstream from Friant Dam.

23 The Ball Ranch is presently in the record ownership
24 of a developer, called Sienna Corporation, based in
25 Minnesota. Staff has negotiated a boundary line and exchange

1 agreement with Sierra Corporation which has several
2 elements.

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

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

14 That about sums up what we are to get here.

15 CHAIRMAN MCCARTH : Any questions by
16 Commissioners?

17 By members of the audience on Item 44?

18 All right. Recommendation adopted.

19 45.

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

23 MR. FUSSELL: Mr. Chairman and Commissioners, this
24 item is a recommendation for a settlement of title claims
25 within a tract of land in the City of Stockton.

1 The Commission approved the annexation of this land
2 to the city in 1989. The Commission has determined that
3 there is a minimal interest for the historic slough within
4 the 360-acre parcel, and has negotiated settlement with the
5 Basell Land Company which would provide for public trust
6 easement being attached to the existing waterways on the
7 site, which are dredger cuts, will protect an adjacent
8 riparian marshland that is going to be part of an ecological
9 reserve that is being protected and restored in the adjacent
10 Spanos' development, and it also involves the Kapiloff Land
11 Bank, either a \$27,000 sum coming to the Kapiloff Land Bank,
12 or a parcel of land to be selected on Empire Tract
13 constituting 60 acres.

14 CHAIRMAN MCCARTHY: Any questions by
15 Commissioners?

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

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

24 COMMISSIONER TUCKER: Send in Mr. Grupe.

25 CHAIRMAN MCCARTHY: Any questions from the members

1 of the audience on Number 45?

2 Recommendation is adopted.

3 46 is off calendar.

4 47.

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

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

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

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

16 CHAIRMAN MCCARTHY: We have Dena Schwarte.

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

19 CHAIRMAN MCCARTHY: Any questions of Ms. Schwarte?

20 All right. Thank you very much.

21 Any other comments from any other member of the
22 audience?

23 UNIDENTIFIED SPEAKER: It was my understanding that
24 there is a performance bond associated with this action,
25 also?

1 MR. HIGHT: That's correct.

2 CHAIRMAN MCCARTHY: Any other comment?

3 47 is adopted as recommended.

4 48.

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

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

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

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

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

23 Yes, sir.

24 UNIDENTIFIED SPEAKER: Item 39.

25 CHAIRMAN MCCARTHY: 39, that may take some time,

1 also.

2 let's proceed with th's item.

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

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

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

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

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

25 We, however, will be leaving a residual stand with

1 an estimated crown cover of 60 percent. State Lands Hen Pass
2 ownership was surveyed for spotted owls on four different
3 occasions this past spring and summer by Fish and Game
4 biologist, Ted Wewster. He's one of the twelve biologists
5 from Fish and Game who can certify that "no take" in
6 harvesting operation.

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

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

16 The harvest we are proposing now is over 175
17 acres.

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

24 In our opinion, it appears that BLM removed the
25 high quality trees, leaving the genetically inferior trees to

1 restock the ground. Our strategy at State Lands has been to
2 remove the low quality trees and leave those trees of higher
3 genetic quality which will grow rapidly and return increased
4 income 20 to 30 years hence.

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

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

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

13 MR. McDONALD: No, we didn't.

14 COMMISSIONER TUCKER: It doesn't warp their
15 personality?

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

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

21 MR. McDONALD: We fed them mice to determine their
22 nesting location. The male owl will eat a couple, and
23 finally about the third time he is full and then he thinks
24 about his mate. Then he will come down and grab the third
25 one.

1 EXECUTIVE OFFICER WARREN: It's true all over.

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

9 That's all I have to say.

10 CHAIRMAN MCCARTHY: Any other comments?

11 EXECUTIVE OFFICER WARREN: No, except, Mr.
12 Chairman, the trip that staff took with the biologist of Fish
13 and Game officials was a very instructive and revealing one.

14 We saw evidence of a prior cut some eight years
15 earlier. During that comparatively short time for
16 reforestation efforts because of the techniques used in the
17 cut, it appeared that we had a fully regenerated forest.

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

1 in order to determine what forestry practices could take
2 place in a manner in order to protect the integrity of the
3 bird species, as mainly the spotted owl.

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

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

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

19 CHAIRMAN MCCARTHY: Any other questions?

20 Any audience questions?

21 Ready for a vote?

22 Anyone object to this?

23 All right. The Commission is unanimous in
24 acceptance.

25 Next.

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

4 CHAIRMAN McCARTHY: Item 39?

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

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

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

16 CHAIRMAN McCARTHY: Any questions?

17 Any audience questions on 49?

18 All right. Accepted as recommended.

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

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

1 the year before that a one-percent cut.

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

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

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

15 CHAIRMAN MCCARTHY: Questions by Members of the
16 Commission?

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

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

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

24 MR. BROWN: Yes, we do.

25 COMMISSIONER TUCKER: Do you have some examples?

1 MR. BROWN: Yes, I do.

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

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

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

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

18 MR. BROWN: Those particular transactions, they are
19 non-routine. We do not know going into it how much time
20 staff will spend on it. We have done a study on what the
21 average will be, and we will require that a deposit be made
22 based on the average. If it takes less time, and the
23 applicant will be required to sign a reimbursement agreement
24 to reimburse us for all of our costs, if it costs less than
25 the fee, we refund the balance. If it's more, we bill them.

1 In the case of a routine transaction, we will
2 continue with the proposed fee, which is adjusted upward from
3 what we were charging now.

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

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

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

13 MR. BROWN: In some cases where you have a public
14 agency, we have waived any fee in the interest of the public.

15 We do not think in the current condition of the
16 General Fund that the State can subsidize other State
17 agencies, special funded agencies and local agencies, and
18 that the actual cost to perform that service to give that
19 agency the right to manage and use that land should be
20 recouped by the State.

21 MR. TROUT: Mr. Chairman, the problem that we face
22 is the fact with the series of budget cuts and lack of
23 increases in cost of living that have been assigned to State
24 agencies, we can no longer perform the service unless we
25 charge out these costs. With the reductions and increases

1 that we have had to absorb, as all State agencies have, we
2 are to the point where we can no longer perform the services
3 unless we have this kind of relief.

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

7 What we have to consider is that if we do not do
8 this, the result is going to be that some projects are just
9 not going to be able to be worked on, which means in effect
10 returning applications and disappointing people who wanted to
11 make a private use of the property or encouraging trespass.
12 That's why we brought this to your attention.

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

17 MR. BROWN: Over a year.

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

21 MR. BROWN: Each transaction.

22 CHAIRMAN McCARTHY: Each transaction, 240 hours?

23 MR. BROWN: Each transaction, on the average.

24 CHAIRMAN McCARTHY: Seems like a lot of time.

25 MR. HIGHT: That's total staff time including

1 engineering, appraisal unit, the legal.

2 CHAIRMAN MCCARTHY: I do not know what the size or
3 complexity of our industrial leases are, but that seems an
4 awful lot of time.

5 MR. BROWN: The fact is, in a case like that, we
6 only charge the actual costs that we do incur. These are
7 averages provided by staff when we were seeking some kind of
8 relief from the ten-percent cut that we sustained, realizing
9 that we would have to give up 23 positions as a result of
10 that cut, and realizing that we could not continue to perform
11 the services that we had in the past.

12 CHAIRMAN MCCARTHY: I'm not disputing the basic
13 rationale presented here.

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

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

22 MR. BROWN: In every case that we do not know going
23 in, in some industrial leases there are going to be many
24 hours put into it, and other one's, if it's a simple
25 pipeline, it's routine. The applicant is going to be charged

1 only our actual cost and could be far less than the 240 hours
2 in that case or greater.

3 CHAIRMAN MCCARTHY: This is an average.

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

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

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

21 COMMISSIONER TUCKER: The industry is paying for
22 the EIR.

23 EXECUTIVE OFFICER WARREN: That is correct, but
24 that is a process we hope will reduce the amount of time and
25 expense associated with a specific site application.

1 You're right, the industry is paying for that,
2 which should benefit all future applicants.

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

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

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

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

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

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

22 In every instance where you see contract, those are
23 instances where we are not sure how many hours it's going to
24 take. We have an average. We want that money paid in
25 advance.

1 MR. HIGHT: In the event that it's less than the
2 average, there would be a refund.

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

5 Questions by the Commission?

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

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

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

21 The problem with the fee to apply for permit or
22 lease or whatever is that it is also going to cover the old
23 lady that has got this dock that her husband built 20 years
24 ago, and she has no money, essentially, and we say you have
25 to have a permit for us, and she says okay and fills out the

1 papers and stuff, then we say it's \$600. Those people will
2 be here saying I can't do this.

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

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

23 I see those as such different situations. To have
24 one policy to fit all of them, I just foresee that what is
25 going to happen is that we're going to immediately eroding

1 and trying to figure out how do we make exceptions because
2 Unocal is not the same as the old lady on the river.

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

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

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

24 The property owners receive in benefits a value far
25 in excess of the processing costs for those piers and buoys.

1 I would like to say in fairness is that they do not pay rent
2 for that. There is only a one-time cost for that.

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

10 CHAIRMAN MCCARTHY: Because we're the favorites.

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

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

24 With that understanding, I think you have got to
25 let us take this first step and see what the response is.

1 The alternative is, as Mr. Trout suggests, either stop
2 processing and deny, or face increased incidents of
3 trespassing.

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

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

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

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

25 COMMISSIONER TUCKER: Do you know any other State

1 agency that is proposing to charge actual costs for
2 services? Is the Coastal Commission planning to do a similar
3 thing?

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

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

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

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

1 responsibilities.

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

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

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

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

24 I'm comfortable if an applicant comes in for an
25 industrial lease, and we say we spend 600 hours, and he says

1 that's preposterous, you couldn't have spent more than 20, we
2 would have to demonstrate to the interest that we spent 600
3 hours on his lease.

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

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

11 COMMISSIONER DWIGHT: Like a law firm.

12 CHAIRMAN MCCARTHY: God help us.

13 Any other questions?

14 I do think that you need to think out, Mr. Warren,
15 the question that Commissioner Tucker has raised and have
16 your staff review what kinds of, particularly painful, little
17 old lady or little old men questions there might be. We want
18 to be consistent in our approach on this thing. We want a
19 pretty conscious idea if we're going to inflict some pain on
20 people who are really without resources, and there are asking
21 a continuance of something in the past. It's not a new
22 application, or they are responding to stricter requirements
23 or conditions that we are imposing which revises a set of
24 conditions under which they have been operating for many
25 years.

1 We want some familiarity with those cases so at
2 least we can chew on it and see if we want to make any
3 rational variation. I don't know if it is possible.

4 Do you understand the point I'm getting at??

5 EXECUTIVE OFFICER WARREN: Yes, sir, I do.

6 COMMISSIONER TUCKER: The other thing is that I
7 think that you have to look at and make sure that you're not
8 coming up with the situation where the costs are
9 prohibitive. If I'm putting in a \$5,000 dock and it costs me
10 \$30,000 to get a permit from the Lands Commission, I think
11 that's a serious problem. Particularly if the fee becomes a
12 way of setting policy.

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

19 If we have to make a study of what does it take to
20 go across the river, I think all of that is fine. In the
21 four years that I have been here, I have seen a wide range of
22 situations. Many of them are not the PG&E type of situation
23 where if somebody is clearly making money out of the deal and
24 they should be sharing with us. Those are the situations
25 that I am concerned about where there is going to be some

1 inequity or some unfairness in terms of an actual charge that
2 we made in that circumstance. That is what I would like to
3 watch for.

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

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

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

16 MR. HIGHT: In the Commission's current Rules and
17 Regulation, there is a provision that authorizes the
18 Commission to charge reasonable, actual, the language is
19 actual cost of transactions, not to exceed actual costs.

20 So, the answer to the question is yes.

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

23 MR. HIGHT: Currently, yes.

24 CHAIRMAN MCCARTHY: Can we advise applicants who
25 come in approximately how many hours it takes to process.

1 MR. BROWN: Yes. That was the reason for the study,
2 to establish those levels which we can go back to them and
3 say the average for this type of transaction is "X" dollars.
4 We need a check for that amount and sign the attached
5 reimbursement agreement.

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

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

11 CHAIRMAN McCARTHY: Any other questions?

12 Any questions from the audience?

13 Any objections from Members of the Commission to
14 this proposal?

15 If not, the Commission adopts it unanimously.

16 EXECUTIVE OFFICER WARREN: Thank you, Mr.

17 Chairman.

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

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

22 MR. KILEY: Item 50 proposes to deny an application
23 by the Marina Group and the City of Foster City for a
24 proposed marina in Belmont Slough near Foster City in San
25 Mateo County.

1 There was a prior application which was approved by
2 the Commission in 1976 to lease these same premises by the
3 Department of Fish and Game. For various reasons that lease
4 was never consummated, and in the meantime the City of Foster
5 City applied. They did not actively pursue their
6 application. Their application to this date remains
7 incomplete.

8 Now, Fish and Game has come back and asked the
9 Commission to go ahead and approve the original lease, or go
10 ahead and consummate the original lease that was approved in
11 1976.

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

15 CHAIRMAN MCCARTHY: Yes, Bruce. Are you going to
16 address this one?

17 MR. THOMPSON: No, the next one.

18 CHAIRMAN MCCARTHY: It was interesting that you be
19 addressing this one.

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

22 All right. Any comment or questions from the
23 Commissioners?

24 Any questions from the audience?

25 All right. Recommendation adopted.

1 Next.

2 EXECUTIVE OFFICER WARREN: Item 51, Mr. Chairman,
3 American Block Company, will be presented to you by the Chief
4 of our Mineral Resources Management Division, Mr. Bruce
5 Thompson.

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

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

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

21 CHAIRMAN MCCARTHY: Any questions from Members of
22 the Commission?

23 From the audience?

24 If not, recommendation adopted.

25 EXECUTIVE OFFICER WARREN: Before taking up Item

1 C39. Viceroy Gold, I would like to take up Item C20. Mr.
2 Thompson will also take that one up. This is for technical
3 amendments.

4 CHAIRMAN McCARTHY: For technical amendments.

5 MR. THOMPSON: Page 127, in the recommendation
6 number two, in line 3, we would like to change PRC 2984 to
7 2894. A little typo.

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

11 We got caught up in our word processing changes.

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

14 MR. THOMPSON: No.

15 CHAIRMAN McCARTHY: Any questions from Members of
16 the Commission?

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

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

21 Commissioner Tucker and McCarthy approve as
22 recommended.

23 What else besides 39?

24 EXECUTIVE OFFICER WARREN: That's it.

25 CHAIRMAN McCARTHY: 39.

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

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

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

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

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

22 Staff's purpose of this selection is to acquire the
23 water rights necessary for the project so that we do not
24 piecemeal our negotiations with Viceroy. That is the basis
25 of our denial recommendation on the school lands section.

1 CHAIRMAN MCCARTHY: Mr. Warren, do you have
2 anything to add to define the purposes of staff's, Commission
3 staff's action here?

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

8 CHAIRMAN MCCARTHY: Mr. Robert Anderson, of the
9 Bureau of Land Management, welcome, Deputy State Director,
10 Mineral Resources.

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

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

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

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

1 environmentally sound manner.

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

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

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

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

22 That's the end of my statement.

23 CHAIRMAN MCCARTHY: Thank you, Mr. Anderson.

24 Any questions of Mr. Anderson?

25 All right. Let's hear from Mr. Tilden.

1 MR. TILDEN: My name is Bill Tilden. I'm an
2 attorney. I represent Viceroy Gold. I would like to go back
3 just a little bit and give you a little bit of history on the
4 project.

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

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

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

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

19 The sales and use taxes generated from the county
20 are somewhere in the nature of \$600,000. An additional
21 \$400,000 a year will be generated in property taxes.

22 The company has spent about five years and \$30
23 million coming to this point. Three-quarters of a million
24 dollars have been spent on the well field that we're talking
25 about today.

1 The status of the project is that it has received
2 both state, local and county approvals necessary to move
3 forward. As it is on State and Federal land, it requires
4 both an Environmental Impact Statement and and Environmental
5 Impact Report.

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

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

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

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

23 Debra Rheems, staff attorney for the Sierra Club
24 Legal Defense Fund and representing the Wilderness Society,
25 Sierra Club, the Desert Survivors, California Wilderness

1 Coalition, the Natural Resource Defense Council, the Desert
2 Protection Council and the Citizens for Mohave National Park
3 said, this county is about to approve a mining reclamation
4 plan which is truly precedential and which will actually
5 ensure that revegetation does occur. At this time, everyone
6 in the environmental community is happy.

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

15 The matter was then unanimously passed.

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

24 Second, this Commission is asked to authorize the
25 challenge of existing mill sites, mining claims and rights of

1 way. This is required because before the State filed its
2 selection, on August 13 of this year, Viceroy had filed
3 claims on the entire area, or, excuse me, on significant
4 portions of the area that are requested for the selection.

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

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

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

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

25 The first case in that instance that I have

1 uncovered was in 1890, very clearly decided on that issue.
2 As recently as 1966 in a case called Howard C. Brown, that
3 same procedure was followed and approved. That was the Kaiser
4 Eagle Mountain Mine in Southern California. Same purpose.

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

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

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

25 We ask that you either reject the requested action

1 at this time, or continue the matter until you can be fully
2 informed on the issue. Thank you.

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

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

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

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

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

23 As this process took form -- that is the permit
24 that is before you on this Calendar Item. As this project
25 proceeded, we made a determination consistent with our

1 responsibilities to the State teachers of this State for an
2 opportunity to increase revenue from State school lands.

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

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

18 We also disagree on one other point. We do
19 disagree on questions of fact and law. In the Notice we
20 received yesterday from BLM denying our indemnity selections,
21 we think that the law has been cited in that Notice and in
22 testimony today that is incorrect. Only part of the statutes
23 are referenced whereas a reading of the entire statute
24 involved shows that what the State has done is appropriate
25 under the law.

1 I would also just like to make this -- we think
2 that our position based on fact, based a law is sustainable.
3 We believe that it's appropriate and suitable to meet in
4 furtherance of our responsibilities to State teachers, and
5 further, if I may say so, on the grounds of equity, general
6 equity considerations.

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

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

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

23 Other than that, maybe Mr. Small would like to
24 comment, but I would like to emphasize, for the record, that
25 we are not opposed to this project. We think that given its

1 nature that it's a good project. We support it. We want to
2 see it continue.

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

5 CHAIRMAN MCCARTHY: Mr. Small.

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

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

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

19 CHAIRMAN MCCARTHY: Would you comment on that, Mr.
20 Anderson?

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

25 Unless lands are withdrawn from mining, we invite

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

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

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

12 MR. ANDERSON: Yes.

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

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

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

23 What we would have to do, our local area managers
24 would have to look at the land and make a determination as to
25 whether it's suitable for reclassification so that we can

1 accept in lieu selections.

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

4 MR. ANDERSON: I don't know.

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

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

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

13 MR. HIGHT: 1900?

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

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

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

1 the State.

2 The Bureau of Land Management has worked hard. They
3 have transferred geothermal lands to State which have
4 potential to produce revenue. They have assisted us in
5 acquiring the forestry lands where that has been appropriate.

6 We are working with them to meet their needs in
7 terms of areas that they feel have wilderness or scenic
8 qualities that they feel should be protected, should be in
9 the Federal realm and making exchanges. The Commission in
10 recent years approved several exchanges and transferred tens
11 of thousands of acres to BL. in exchange for thousands of
12 acres of revenue producing property.

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

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

22 We need to take this entitlement and convert it to
23 a revenue producing asset, in appropriate locations to the
24 benefit of retired teachers. There are 120,000 in the State
25 that are retired, and 300,000 plus teachers to which

1 retirement will be coming. This is a significant group of
2 Californians.

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

4 CHAIRMAN MCCARTHY: Yes.

5 MR. TILDEN: It sounds to me like there are three
6 issues. The company finds itself in the middle of a very
7 difficult issue that State and BLM have been working with for
8 90 some years at this point.

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

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

23 The other item that I think is critical to all of
24 our resolution of this issue is an understanding, in my view,
25 if the State is going to see the lands developed, it's going

1 to have to do so in a context in which industry, who is going
2 to be the ultimate payer of either the price here or the
3 price elsewhere, industry is encouraged to act in such a way
4 as to develop the funds that are necessary to pay the price.

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

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

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

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

25 If our claim for indemnity selection is improper,

1 they will tell us so, in which case we will withdraw.

2 We think under the law that our claim is valid.

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

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

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

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

16 CHAIRMAN MCCARTHY: Any other comments?

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

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

24 Mining companies, like oil companies, are very
25 competitive. My few friends that I know in the mining

1 industry make a practice out of looking for mining areas
2 where they believe the mining claims themselves are weak, and
3 they can go do their own claims, or other title weaknesses
4 where they can gain an advantage.

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

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

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

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

24 Whether companies are going to come in and say that
25 if the State practices business like this we aren't going to

1 do business in that State, they will go where the money is.
2 If they think there is a viable project there, and they can
3 cut an economic arrangement with the State, assuming that we
4 got involved in their project, they would come forward.

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

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

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

14 MR. TILDEN: \$30 million, sir.

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

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

25 Let me answer it in a broad, general category,

1 which is about all I can do. Most mining decision makers look
2 at investments in mining properties from the context that if
3 they cannot obtain at least a 15 percent return on
4 investment, then it is simply not worth the risk.

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

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

10 CHAIRMAN MCCARTHY: That's not a complete answer to
11 the question. Perhaps the answer is impossible for you to
12 give.

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

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

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

24 MR. TILDEN: Again, I think that their optimism
25 would be that there would be more. Their concern would be

1 that it would be less. Their hope is that that would be an
2 average of a number of projects, yes.

3 I apologize for the evasiveness of that answer.
4 It's very difficult to pin an answer to that down.

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

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

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

22 The gentleman who just approached me is Mr. Ross
23 Fitzpatrick. He's the President of Viceroy Gold. If you
24 would like to direct your question directly to him, perhaps
25 he could give you a more responsive answer than I have.

1 CHAIRMAN MCCARTHY: Fine. Step forward and
2 identify yourself.

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

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

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

16 I would like to respond --

17 CHAIRMAN MCCARTHY: What is your average rate of
18 return for your other gold mining investments in other states
19 in America?

20 MR. FITZPATRICK: This is a specific project for
21 Viceroy Gold. It's the only project which Viceroy Gold has,
22 and we have developed it from the inception, which I think,
23 if I may, respond to an earlier comment that was made,
24 Viceroy Gold is a Delaware Corporation. It was established
25 to develop this project.

1 It's true that it is owned by a Canadian
2 incorporated company. That Canadian incorporated company is
3 a publicly traded company on the Toronto Stock Exchange. The
4 ownership of that company, I cannot be exact, but what would
5 be American ownership, Canadian ownership and European
6 ownership.

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

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

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

25 All of the things that you have mentioned are

1 persuasive, but try to appreciate after several years of
2 investigating your money into this project, we are trying to
3 figure out how do expedite the project going forward and at
4 the same time fulfill our obligation to the retired teachers
5 in the State, which is what we are supposed to be doing.

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

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

16 Any other comments or questions from the
17 Commission?

18 Any closing?

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

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

23 EXECUTIVE OFFICER WARREN: Nothing further.

24 CHAIRMAN MCCARTHY: Anyone else in the audience
25 have a comment on Item 39?

1 MR. FITZPATRICK: I would like to say that we
2 proceeded with legal advice as to how to locate claims. We
3 located claims whether mineral claims or mill site claims in
4 an area which was Federal land, which was open to claim
5 staking.

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

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

23 CHAIRMAN MCCARTHY: You have done everything
24 correctly in dealing with the Federally owned and managed
25 lands, sir.

1 I guess the only reason that we have this issue
2 before us today is now you're dealing with some State owned
3 and managed land.

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

5 Our water well field is in Federally owned land.
6 The State the attempting to obtain that land under an in lieu
7 selection.

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

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

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

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

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

1 access route.

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

5 CHAIRMAN MCCARTHY: We understand that. I think
6 you understood the point that I was making to
7 Mr. Fitzpatrick.

8 MR. TILDEN: I do.

9 There is that split.

10 CHAIRMAN MCCARTHY: All right.

11 Commissioner Tucker.

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

24 To delay the project in order make those claims is
25 something that I am uncomfortable with. I would have a

1 question as to whether or not we can continue to make our
2 claims and at the same time give them the rights of way that
3 they request.

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

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

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

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

24 There is the Notice, the time period for resolving
25 such disputes was triggered by receipt by us of the Notice of

1 Determination from BLM. We have sixty days.

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

7 EXECUTIVE OFFICER WARREN: We're ready to proceed.

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

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

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

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

25 MR. SMALL: Commissioner Tucker, the rights of way

1 are only for the water pipeline connected to the water wells
2 that would be drilled on the school section. We have not
3 negotiated with them, we have not set a price, nothing on the
4 school section. We have no evidence at this point in time
5 that the issuance of a lease on the school section is
6 absolutely critical and necessary for their project to go
7 forward.

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

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

17 MR. SMALL: On the school section for water wells.
18 The right of way is not access to their project.

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

1 MR. SMALL: In the past we have.

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

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

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

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

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

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

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

25 The going of that is going to involve a filing of

1 an IBLA, an Interior Board of Land Appeals, appeal from the
2 current decision, which takes approximately two years, unless
3 it's expedited, then it may take something in the matter of
4 months less, maybe a year and a half.

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

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

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

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

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

22 MR. TILDEN: We have drilled for it.

23 CHAIRMAN MCCARTHY: If we say go ahead with the
24 project, just don't count on operating on this State land, on
25 obtaining State water or rights of way across State land,

1 just complete your project on Federal land, can you go ahead
2 and do that?

3 MR. TILDEN: Yes, we can.

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

7 CHAIRMAN MCCARTHY: But you can do it without State
8 water?

9 MR. TILDEN: That is correct.

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

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

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

23 They went to Federal lands for a number of
24 reasons. One of which was to strengthen their bargaining
25 position with us in terms of what they were trying to

1 acquire, the school lands parcel. Whereupon, I'm not sure
2 that it followed in this sequence, but it seems to me it's
3 suitable for us to take a look at what they have done and see
4 if we have a superior claim to that in order to bypass
5 negotiations with us.

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

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

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

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

21 Actually, the water well drilled on the State land
22 was drilled in error because of a surveying problem in the
23 field. It was never intended to be drilled on State land
24 because we thought we could get the water outside of the
25 State land and not have to deal with the State.

1 Which is partly something that I think that the
2 State should think more about in the sense of whether or not
3 the State is acting in such a tough way that they are
4 discouraging industry from coming into California and dealing
5 with the State.

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

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

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

25 I'm taken by the validity in some of the company's

1 claim. I won't be back for the next meeting, so my views may
2 be immaterial.

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

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

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

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

25 CHAIRMAN MCCARTHY: Does Mr. Anderson or Mr. Tilden

1 see any problem with that?

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

7 I think what that does is exactly --

8 CHAIRMAN McCARTHY: May I ask a question?

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

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

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

18 MR. FITZPATRICK: October of 1987.

19 COMMISSIONER TUCKER: The Lands Commission
20 commented on the EIR.

21 CHAIRMAN McCARTHY: On the issue of the EIR.

22 When did you give us an application to take water
23 from State land?

24 MR. TILDEN: October 1987.

25 CHAIRMAN McCARTHY: Were you concerned that you did

1 not get the issue resolved?

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

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

8 CHAIRMAN MCCARTHY: I understand that. That's not
9 the question I asked.

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

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

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

21 CHAIRMAN MCCARTHY: This is not a minor
22 environmental issue.

23 COMMISSIONER TUCKER: They have been through the
24 environmental issue.

25 CHAIRMAN MCCARTHY: I'm aware of that. I am

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

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

11 CHAIRMAN MCCARTHY: When was the CEQA process
12 completed?

13 MR. TILDEN: In September.

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

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

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

1 established our water source.

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

5 CHAIRMAN MCCARTHY: You established your title to
6 the water that is under State land?

7 MR. FITZPATRICK: No federal.

8 CHAIRMAN MCCARTHY: But that's the in lieu question
9 that you're raising.

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

13 MR. TILDEN: We made the application.

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

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

20 MR. TILDEN: No.

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

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

24 CHAIRMAN MCCARTHY: You can drill through Federal
25 water.

1 MR. TILDEN: We have already established the wells
2 which will provide us sufficient water.

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

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

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

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

17 COMMISSIONER TUCKER: I'm not sure that I'm
18 comfortable at this point with the clamour. I'm torn.

19 Our obligation as trustees to the retired teachers
20 means that we should vigorously identify sources of revenue
21 for that fund. I would be interested in hearing, and we do
22 not have to do it here but some other place and take some
23 time, but response to the claim that we are establishing
24 policy whereby we're going to go around and wait for other
25 people to identify a mineral resource and make an investment

1 and then if we think it's productive assert a claim to it.
2 Not as State Lands. I'm always comfortable with that.

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

5 If I understand the description, it is really
6 different. This is our choice. If we were not making this
7 indemnity selection assertion, we would have no other claim
8 to that, forgetting the wells, to this property. They would
9 not have a cloud in effect on their claim but for our
10 indemnity selection assertion. I'm concerned about that.
11 Maybe this is what we might want to do for teachers
12 retirement fund to go around the State and look for places
13 where claims have been developed and then make assertions.

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

18 EXECUTIVE OFFICER WARREN: Not just mining people.

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

1 return.

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

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

25 Now, it was only late in the CEQA process that we

1 recognized that the project was viable. We filed our
2 indemnity selections in August. That was the earliest we
3 could have. As early as we recognized the revenue potential,
4 we acted.

5 COMMISSIONER TUCKER: I agree that there are a lot
6 of applications for in this policy. It seems to me, as far
7 as I am aware, that mining is in a sense a anomalous case
8 because of the fact that the other situations that you talk
9 about, shopping centers, et cetera, BLM has a project on the
10 land. Contractor comes to them and says I want to build on
11 your land. I'll pay you so much. We come along and make an
12 indemnity selection, that contractor doesn't care.
13 Presumably the result of it is that BLM says pay your rent to
14 the teachers retirement rather than the Federal Government.
15 We simply have only switched title owners.

16 Here it is anomalous because of the fact that they
17 don't pay anything for the claim. By switching title, we
18 change the rules of the game far down the stream of their
19 investment. So that the contractor who is building the
20 shopping center understands what his rent is and can make an
21 economic decision, based upon that to whether it's a viable
22 project or not, it would be like they are turning over to us,
23 and we are allowed to tell the contractor, the rent is
24 doubled or tripled and quadrupled or whatever. This
25 situation is different than other indemnity selections in

1 that it's a change of the rules for the person who is
2 operating the business. I do not know how much of an
3 economic change that it is.

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

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

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

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

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

23 CHAIRMAN MCCARTHY: That could be done fairly
24 quickly.

25 MR. TILLEN: Is there no similar situation where

1 the State is selling water? We're not talking about selling
2 go'g here.

3 EXECUTIVE OFFICER WARREN: In California it's
4 gold.

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

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

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

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

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

20 MR. STEVENS: I'm sorry. It wasn't before me.

21 The prior appropriation was based on mill site or
22 mining claims.

23 MR. ANDERSON: Both, as I understand.

24 MR. STEVENS: On the same property.

25 Was this property characterized as mineral?

1 MR. TILDEN: Let me correct one thing.

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

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

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

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

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

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

22 We have 160,000 claims of record in the State. We
23 have over 1500 mining operations of one kind or another. We
24 simply do not verify until there is a conflict with the BLM
25 program or a patent application.

1 MR. STEVENS: None of the basis of denial was made
2 on the basis that the State lands in place were not mineral
3 in nature and the lands claimed were?

4 MR. ANDERSON: That's right.

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

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

12 Is that jurisdiction?

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

15 CHAIRMAN MCCARTHY: To avoid the year and a half
16 procedure.

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

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

24 MR. TILDEN: I do not have an answer. I have never
25 been in an instance where that has been pursued.

1 Generally, my understanding would be no.

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

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

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

16 CHAIRMAN MCCARTHY: Final comments?

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

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

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

23 We are meeting the third or fourth or something.
24 That's within the thirty days.

25 I would suggest to wait until the next meeting to

1 see if some progress can be made. Obviously we wish the
2 company and BLM and Lands Commission staff to come to some
3 accommodation.

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

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

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

12 EXECUTIVE OFFICER WARREN: Essentially, 6, 7, 8 and
13 9 would permit us to take the steps necessary within the time
14 available to establish the validity of our indemnity
15 selection or determine the validity of our indemnity
16 selection.

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

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

21 COMMISSIONER DWIGHT: The Commission staff wanted
22 to act on a whole not a piecemeal.

23 EXECUTIVE OFFICER WARREN: We have thirty days to
24 establish validity of our patent, of our selection and by
25 postponing this could jeopardize our ability to do that

1 without allowing us the authority to pursue that.

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

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

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

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

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

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

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

22 COMMISSIONER DWIGHT: That would very well stand.

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

25 EXECUTIVE OFFICER WARREN: That concludes the

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calendar. Thank you.

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

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CERTIFICATE OF SHORTHAND REPORTER

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2
3 I, VICKI L. MEDEIROS, a Certified Shorthand
4 Reporter of the State of California, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing hearing was reported in shorthand by me, Vicki L.
7 Medeiros, a Certified Shorthand Reporter of the State of
8 California, and thereafter transcribed into typewriting.

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

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

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