MINUTE ITEM 4/4/74

25. STATUS OF MAJOR LITIGATION.

During consideration of Informative Calendar Item 23 attached, Mr. E. N. Gladieux, Executive Officer, State Lands Commission, summarized the Commission's status concerning the pricing exemption situation. He reported that the State's lessees have paid the State on the basis of the exempt oil price from September 1, 1973, to October 25, 1973, amounting to about $6 million.

Warren J. Abbott, Deputy Attorney General, briefed the Commission on the current status of the suit entitled People v. Simon, advising the Commission that a hearing was scheduled for April 8 before the Federal District Court in Los Angeles where a final determination was expected to be made on the merits of the case.

Mr. Robert W. Parkin, Deputy City Attorney, City of Long Beach, reported to the Commission on the City's contracts in the Wilmington Oil Field, and the agreement which was reached with THUMS. He stated that THUMS had acknowledged that the City and the State had a claim against them for the accounting under the contracts on the basis of exempt prices from October 25, 1973, to March 20, 1974. Mr. Abbott explained that the purpose of obtaining acknowledgment from the oil companies of the City-State's claim was that if there were any "pass through" problems, the companies would be on notice. Because the agreement prepared by the City with THUMS had a provision requiring State Lands Commission approval, the Commission approved the agreement.

Upon motion duly made and carried, the following resolution was adopted:

THE COMMISSION APPROVES THE "AGREEMENT DETERMINING VALUATION OF OIL ALLOCATED PURSUANT TO CONTRACTORS' AGREEMENT LONG BEACH UNIT" BETWEEN THE CITY OF LONG BEACH, SUBJECT TO THE APPROVAL OF THE STATE LANDS COMMISSION OF THE STATE OF CALIFORNIA, AND TEXACO INC., EXXON CORPORATION, UNION OIL COMPANY OF CALIFORNIA, MOBIL OIL CORPORATION, AND SHELL OIL COMPANY.

Attachment:
Informative Calendar Item 23 (5 pages)

INFORMATIVE CALENDAR ITEM 3/74

23.

STATUS OF MAJOR LITIGATION

As of February 28, 1974, there were 251 litigation projects involving the Commission.

W 503.696

1. U. S. v. 1164.34 Acres
U. S. District Court Case No. 2274

(U.S. condemnation action for wildlife refuge of all the mud flats between the Sears Point Highway and San Pablo Bay boundary by Mare Island Navy Yard on the east and Sonoma Creek on the west.)

Tract 12 in the condemnation take is the subject of a stipulation for judgment approved by the Commission at its January 1973 meeting. Said judgment will establish the 1923 U. S. Government Land Office meander line as the permanent and fixed boundary line between the privately owned uplands and the sovereign lands of the State. The case is still under negotiation.

W 503.699

2. Pembroke v. State
Orange Superior Court Case No. 189853

(Declaratory relief action by plaintiff to declare its rights vis-a-vis the State's interest.)

Factually, the case concerns the last natural position of the Santa Ana River, and the extent to which the bed of the river crosses the private property of the various parties. The Office of the Attorney General has reached a tentative negotiated settlement of the matter based upon the 1913 survey of the Santa Ana River. The paper work necessary for final approval and filing is now being proceeded.

3. City of Albany v. State
Alameda Superior Court Case No. 428396 W 503.726

(Plaintiff seeks declaratory relief with regard to the State Lands Commission finding that the 1961 tideland grant to the City of Albany had not been substantially improved.)

The Court of Appeals modified its injunction to prohibit any further fill within the waters of San Francisco Bay. The new order, however, allows the additional piling of material on the existing fill.

On January 21, 1974, the Court of Appeals ruled on the merits of the case before it. The court ruled that the formation of the State Lands Commission at the meeting terminating the Albany grant was proper. The case is remanded to the Superior Court for trial on the issue of substantial improvement. The date of trial is not yet determined.

4. Pariani v. State of California
San Francisco Superior Court Case No. 657291 W 503.737

(Plaintiff seeks to quiet title to three parcels of land in Sonoma and Lake Counties. State patented said land into private ownership in 1953, reserving all mineral rights. Plaintiff now seeks to determine whether geothermal energy was reserved to the State under the 1953 patent.)

The Attorney General's Office filed a cross-complaint in July 1973, and in October 1973 a demurrer was filed to certain answers filed by one group of plaintiffs. On December 4, 1973, the Court upheld the State demurrer, thereby eliminating three of the plaintiff's defenses in the case.

Plaintiffs have filed a motion for summary judgment and for judgment on the pleadings. Their arguments and the counter arguments of the Attorney General will be heard at a hearing scheduled for March 27, 1974.

5. Union Oil of California v. Houston I. Flournoy, et al. W 503.747
U. S. District Court, Central District
Civil No. 732486

(An action by Union Oil Company to prevent the State from selling royalty oil.)

Under State Oil and Gas Lease PRC 3033.1 entered into with Union Oil Company, the Commission had the right to receive royalty payments in kind. At its July 1973 meeting, the Commission announced its intention to receive bids for this royalty oil and for royalty oil for other Orange and Los Angeles County leases. Bids were subsequently received for this royalty oil. The contract for the purchase of this oil was to be awarded at the October 25, 1973, Commission meeting, but this award was prevented by Union's filing and obtaining on October 24, 1973, an order to show cause and temporary restraining order. Union alleged that the sale was in violation of the Federal Government "Phase IV" price controls and was hence illegal. On November 5, 1973, the preliminary injunction obtained by Union was denied and the temporary restraining order was dissolved.

On November 29, 1973, the Commission awarded the contract to purchase the oil. That same day, Plaintiff applied for another temporary restraining order to prevent the sale, which order was denied. Plaintiff's second application for preliminary injunction was heard and denied on December 17, 1973.

Federal regulations which clearly exempted the State from the Cost of Living Council regulations have been amended by the Federal Energy Office to require State compliance with its new regulations. Enforcement of that Order has been restrained by the U. S. District Court in Los Angeles in the case of People v. Simon.

6. State of California v. County of San Mateo, et al. W 1839.28
San Mateo Superior Court Case No. 144257 W 6987

Suit seeking Declaratory Judgment to protect the public property rights in land covered by the open waters of South San Francisco Bay westerly of the deep draught ship channel, the area of which has been substantially increased with the filing of a cross-complaint by Westbay Community Associates to be an approximate 10,000 acres and 21 miles of shoreline including most of the westerly portion of the Bay between the San Francisco International Airport and the southerly San Mateo County line. Titles to other adjacent substantial areas of salt ponds have been brought into the case with the filing of a complaint in intervention by Leslie Salt Co. Pretrial and discovery proceedings are now in progress, with factual investigation, relating to substantial and complex issues, continuing.

7. State of California v. Dart Industries, Inc., et al. W 503.743
Nevada County Superior Court Case No. 18595

(Ejectment action to compel removal of purprestures from Donner Lake.)

On July 2, 1973, the State filed complaint in ejectment for damages, and to compel the removal and prevent the maintenance of purprestures which obstruct navigation and interfere with the exercise of the public trust over navigable waters of Donner Lake. The purprestures are in the form of a landfill, a concrete boat launching ramp, and a water intake pipeline which encroach waterward into the lake.

Defendants in this action have been served with summons and complaint and have been granted an indefinite extension of time in which to answer, contingent upon their application for and attainment of the appropriate leases and permits. The joint draft EIR between Tahoe Donner Public Utility District and Dart is currently being prepared. The lease applications have been received. Partial settlement negotiations are in progress.

8. Construction Aggregates Corporation v. State of California, et al. W 503.756
San Francisco Superior Court No. 669-359

Plaintiff sued the State claiming that the State Lands Commission has breached its mineral extraction lease (PRC 709.1). Plaintiff claimed they have an exclusive right to dredge sand from San Francisco Bay in the area described under their lease. Plaintiff claimed that the State Lands Commission, by allowing the City and County of San Francisco through the San Francisco Port Commission, to dredge materials from San Francisco Bay for the construction of piers and wharves as part of the renovation of the Port of San Francisco, violates the exclusive rights of their lease.

The Attorney General's office is preparing an answer to the complaint.