

MINUTE ITEM

This Calendar Item No. 35
was approved as Minute Item
No. 35 by the State Lands
Commission by a vote of 3
to 0 at its 6-24-76
meeting.

6/24/76
GH

35. AMENDMENT AND CONSENT TO ASSIGNMENT OF LEASE PRC 3414.1,
SAN PABLO BAY, CONTRA COSTA COUNTY; PACIFIC REFINING COMPANY
AND GULF OIL CORPORATION - W 6620, PRC 3414.1.

During consideration of Calendar Item 35, Dennis Goldstein, Deputy Attorney General, explained the background of the transaction and the terms and conditions of the proposed lease. He explained that this is the first lease to use the new volumetric rental regulations. In addition, Mr. Goldstein advised that the applicant asked that he request the Commission to authorize the Executive Officer to issue them a letter of policy. This letter would assure them that in the event there is litigation over the State's right to charge volumetric rental, all rents received would be deposited in a special account into the Treasury and returned to them if the courts overruled the Commission's volumetric rental regulations. He advised the letter would not be an amendment to the lease, and that it would expressly state it is not a waiver of any of the rights of Pacific Refining Company or the State regarding the possible litigation. Mr. Goldstein concluded by saying that after many hours of negotiations and review it is the staff's opinion this agreement is in the best interests of the State.

Mr. John W. Fowler, attorney from the law firm of McCutchen, Doyle, Brown and Enerson, representing Pacific Refining Company, appeared. Mr. Fowler stated that Pacific concurs with the proposed agreement with one exception: They strongly object to the imposition of the volumetric rental charge for the following reasons:

1. Since the volumetric charge is applied to a wharf and pipeline connected to ships and barges, such a charge would have the effect of imposing a duty on tonnage, which is forbidden by the State Constitution.
2. Contrary to the State's view, they feel the volumetric charges have no relationship to the appraised value.
3. The volumetric charge would result in an unconstitutional burden on interstate commerce.

With the foregoing in mind, Mr. Fowler urged the Commission to approve the proposed item, but excluding the provision that once the minimum rental of \$32,500 is received, the rate will go on a varying scale. Mr. Fowler stated they are requesting the rental rate be set at a fixed rate.

MINUTE ITEM NO. 35. (CONTD)

However, Mr. Fowler further stated that if the Commission insisted on imposing the volumetric rental formula, Pacific authorized him to sign the proposed agreement provided the Executive Officer issues the proposed statement regarding the deposit and possible refund of volumetric rents as indicated above. It is their view that by signing under those circumstances Pacific will not be waiving any rights to contest the illegal features of the amended lease.

To clarify the record, Mr. Goldstein pointed out that he does not concur with Mr. Fowler's statement that his client has not waived any rights to perhaps challenge the agreement by virtue of signing any of the contemplated documents. Mr. Goldstein requested that the record show that it is a unilateral statement.

A discussion arose over Mr. Fowler's statement that the rental was an unconstitutional tax instead of a lease charge. Chairman Cory clarified the record by saying it is the Commission's position that the rental is not a tax but a lease rental.

At this time, Mr. Goldstein pointed out that the Executive Officer's letter includes a provision that if the parties could not agree on a firm rental, the State will serve a 60-day notice on the lessee to attempt to establish a rental rate. If at the end of 60 days the lessee does not agree with the rental, the lease will be terminated. He stated that in his best judgment the 60 day notice provision would still be in effect upon the Division's return of the rentals to Pacific if the State's position were overruled in court.

Chairman Cory asked Mr. Fowler if his client agrees with Mr. Goldstein's account of the contents of the letter. Mr. Fowler stated that he did with the exception of some minor details concerning the 60-day notice provision.

At the conclusion of the discussion, Chairman Cory asked how long would it take to execute the documents. It was agreed that a stipulation would be amended into the agreement whereby the lease would be signed within three weeks of the date of the Commission meeting.

Upon motion duly made and carried, the following resolution as amended, was adopted by a vote of 5-0:

THE COMMISSION TOOK THE FOLLOWING ACTION WITH RESPECT TO LEASE PRC 3414.1 PROVIDING THAT ALL DOCUMENTS ARE EXECUTED THREE WEEKS FROM THE DATE OF THE JUNE 24, 1976 COMMISSION MEETING:

MINUTE ITEM NO. 35 (CONTD)

1. DETERMINES THAT AN ENVIRONMENTAL IMPACT REPORT HAS NOT BEEN PREPARED FOR THIS ACTIVITY AS SUCH REPORT IS NOT REQUIRED UNDER THE PROVISIONS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.
2. AUTHORIZES THE ISSUANCE TO GULF OIL CORPORATION OF AN AMENDMENT TO LEASE PRC 3414.1, EFFECTIVE AUGUST 18, 1976, WHICH WOULD ACCOMPLISH THE FOLLOWING:
 - A. CHANGE THE LAND DESCRIPTION TO THAT SHOWN ON EXHIBIT "A" ATTACHED AND BY REFERENCE MADE A PART HEREOF;
 - B. SET A FIRM ANNUAL RENTAL AS FOLLOWS:

MINIMUM ANNUAL RENT = \$32,500.
UNTIL THE MINIMUM ANNUAL RENTAL OF \$32,500 IS EQUALED, THE RENTAL SHALL BE COMPUTED BY MULTIPLYING THE NUMBER OF BARRELS OF CRUDE OIL AND PRODUCTS AND DERIVATIVES THEREOF PASSING OVER THE STATE'S LAND BY \$0.01 PER BARREL. THEREAFTER, FOR THE NEXT 7 MILLION BARRELS PASSING OVER THE STATE'S LAND, RENTAL SHALL BE \$0.001 PER BARREL; FOR THE NEXT 20 MILLION BARRELS PASSING OVER THE STATE'S LAND, RENTAL SHALL BE \$0.003 PER BARREL; FOR THE NEXT 20 MILLION BARRELS, RENTAL SHALL BE \$0.006 PER BARREL; FOR EACH BARREL OVER AND ABOVE THE CUMULATIVE TOTAL OF THE PRECEDING INCREMENTS, THE RATE SHALL BE \$0.009 PER BARREL;
 - C. EXTEND THE TERM OF SAID LEASE PRC 3414.1 FROM NOVEMBER 18, 1965 TO NOVEMBER 17, 1985, WITH LESSEE'S OPTION TO RENEW FOR ONE SUCCESSIVE PERIOD OF 5 YEARS AND 2 SUCCESSIVE PERIODS OF 10 YEARS EACH; ALL OTHER TERMS AND CONDITIONS OF LEASE PRC 3414.1 SHALL REMAIN IN FULL FORCE AND EFFECT.
3. AUTHORIZES A COMPROMISE AND SETTLEMENT AGREEMENT WITH GULF OIL CORPORATION CONCERNING THE RETROACTIVE RENTAL ADJUSTMENT PROVIDED FOR IN LEASE PRC 3414.1 COVERING RENTAL FOR THE PERIOD FROM NOVEMBER 18, 1965, THROUGH AUGUST 17, 1976, AND RELEASING GULF OIL CORPORATION FROM ANY OBLIGATIONS ARISING FROM LEASE PRC 3414.1.
4. APPROVES THE ASSIGNMENT OF LEASE PRC 3414.1 FROM GULF OIL CORPORATION TO PACIFIC REFINING COMPANY, A WHOLLY OWNED SUBSIDIARY OF CTC INDUSTRIES CORPORATION WHICH IS A WHOLLY OWNED SUBSIDIARY OF COASTAL STATES GAS CORPORATION, EFFECTIVE AUGUST 18, 1976.

MINUTE ITEM NO. 35: (CONTD)

5. AUTHORIZES THE STATE LANDS DIVISION AND THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL STEPS NECESSARY, INCLUDING LITIGATION, TO EFFECT THIS TRANSACTION.

Attachment:

Calendar Item 35 (4 pages)

AMENDMENT AND CONSENT TO ASSIGNMENT
OF LEASE PRC 3414.1

In 1965, the Commission entered into a 15-year lease Agreement with Sequoia Refining Corporation (Minute Item No. 36, dated November 18, 1965), which agreement authorized Sequoia to construct and operate a wharf and appurtenant pipelines for the loading/unloading of petroleum products on State tide and submerged lands in San Pablo Bay, Contra Costa County. The terms of the original lease provided that Sequoia would pay an unadjusted annual rental of \$10,000 per annum until a firm annual rental was established by mutual agreement. It was agreed that when a firm annual rental was established there would be a retroactive adjustment to the end that the total of all rentals theretofore accrued under the lease would equal the amount that would have accrued had the firm rental been in effect since November 18, 1965.

Subsequent to entering into the aforementioned agreement, Sequoia Refining Corporation merged into Gulf Oil Corporation effective November 29, 1974, with Gulf being the surviving company.

Pacific Refining Company, a wholly owned subsidiary of CIC Industries Corporation, which is a wholly owned subsidiary of Coastal States Gas Corporation, has now acquired Gulf's upland interests (Hercules Refiner's complex) and Gulf and Pacific Refining Company have filed a request with the Commission to obtain the Commission's consent to the assignment of Lease PRC 3414.1 to Pacific Refining Company.

Negotiations between Gulf, Pacific Refining Company, Coastal States Gas Corporation, the Office of the Attorney General and Division staff have resulted in a negotiated rental agreement between the State, Gulf Oil Corporation, and Pacific Refining Company for a firm rental commencing on August 18, 1976. The rental agreement recommended herein implements the volumetric rental alternative adopted by the Commission at its regular meeting in April and sets by mutual agreement the firm rental provided for in PRC 3414.1.

Specifically, the new agreed annual rental provides that a volumetric rental amount of \$0.01 per barrel will apply to all crude oil and products and derivatives the oil passing over the State's land until the minimum annual rental of \$37,500 is equaled. Thereafter, for the next 7 million barrels, the volumetric rate shall be \$0.001 per barrel; for the next 20 million barrels the rate shall be \$0.005 per barrel; for the next 20 million barrels the rate shall be \$0.015 per barrel; for each barrel over and above the cumulative total of the preceding increments, the rate shall be \$0.009 per barrel, the above minimum volumetric rental figures represent a negotiated

CALENDAR ITEM NO. 35 (CONT'D)

compensatory rental which the Division feels is reasonable for the applicant's terminal site.

In arriving at the recommended rental figures, staff gave consideration to the criteria set forth in the newly adopted regulations (Subsection (h) of Section 2006, 2 Cal. Adm. Code, Article 2), including the potential for significant environmental effects which are inherent in oil terminal operations, and the fact that said lands have been determined to contain significant environmental values pursuant to PRC 6370.1.

Other features of the proposed agreement include a settlement of the retroactive rental adjustment provided for in PRC 3414.1 in the amount of \$49,609.23; the State's consent to assignment of the lease from Gulf Oil Corporation to Pacific Refining Company; provided however, that Gulf will be released and relieved from any duties and obligations under the lease; provision for periodic reporting by Pacific Refining Corporation on the ownership and quantities of materials passing over the State's land; auditing of applicant's records for the terminal operations; and extension of the initial term of the lease to November 17, 1985.

An amendment of the land description is also being accomplished to reflect the results of Boundary Line and Exchange Agreement (BLA 144), which Agreement defines the boundary between the upland and the State's land.

Staff believes that the compromise, prospective rental settlement recommended herein provides the State with a fair and reasonable return for use of the public's land, while at the same time, takes into consideration all factors determined relevant by the applicant and Division staff.

An Environmental Impact Report is not required for this action.

EXHIBITS: A. Land Description. B. Location Map.

IT IS RECOMMENDED THAT THE COMMISSION TAKE THE FOLLOWING ACTION WITH RESPECT TO LEASE PRC 3414.1:

1. DETERMINE THAT AN ENVIRONMENTAL IMPACT REPORT HAS NOT BEEN PREPARED FOR THIS ACTIVITY AS SUCH REPORT IS NOT REQUIRED UNDER THE PROVISIONS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.
2. AUTHORIZE THE ISSUANCE TO GULF OIL CORPORATION OF AN AMENDMENT TO LEASE PRC 3414.1, EFFECTIVE AUGUST 18, 1976 WHICH WOULD ACCOMPLISH THE FOLLOWING: (A) CHANGE THE LAND DESCRIPTION TO THAT SHOWN ON EXHIBIT "A" ATTACHED AND BY REFERENCE MADE A PART HEREOF; (B) SET A FIRM ANNUAL RENTAL AS FOLLOWS:

MINIMUM ANNUAL RENT: \$32,500.
UNTIL THE MINIMUM ANNUAL RENTAL OF \$32,500 IS COMPLETED, THE RENTAL SHALL BE COMPUTED BY MULTIPLYING THE NUMBER OF BARRELS OF CRUDE OIL AND PRODUCTS AND DERIVATIVES

CALENDAR ITEM NO. 35 (CONTD)

THEREOF PASSING OVER THE STATE'S LAND BY \$0.01 PER BARREL. THEREAFTER, FOR THE NEXT 7 MILLION BARRELS PASSING OVER THE STATE'S LAND, RENTAL SHALL BE \$0.001 PER BARREL; FOR THE NEXT 20 MILLION BARRELS PASSING OVER THE STATE'S LAND, RENTAL SHALL BE \$0.003 PER BARREL; FOR THE NEXT 20 MILLION BARRELS, RENTAL SHALL BE \$0.006 PER BARREL; FOR EACH BARREL OVER AND ABOVE THE CUMULATIVE TOTAL OF THE PRECEDING INCREMENTS, THE RATE SHALL BE \$0.009 PER BARREL;

(C) EXTENDS THE TERM OF SAID LEASE PRC 3414.1 FROM NOVEMBER 18, 1965 TO NOVEMBER 17, 1985, WITH LESSEE'S OPTION TO RE-NEW FOR ONE SUCCESSIVE PERIOD OF 5 YEARS AND 2 SUCCESSIVE PERIODS OF 10 YEARS EACH; ALL OTHER TERMS AND CONDITIONS OF LEASE PRC 3414.1 SHALL REMAIN IN FULL FORCE AND EFFECT.

3. AUTHORIZE A COMPROMISE AND SETTLEMENT AGREEMENT WITH GULF OIL CORPORATION CONCERNING THE RETROACTIVE RENTAL ADJUSTMENT PROVIDED FOR IN LEASE PRC 3414.1 COVERING RENTAL FOR THE PERIOD FROM NOVEMBER 18, 1965 THROUGH AUGUST 17, 1976, AND RELEASING GULF OIL CORPORATION FROM ANY OBLIGATIONS ARISING FROM LEASE PRC 3414.1.
4. APPROVE THE ASSIGNMENT OF LEASE PRC 3414.1 FROM GULF OIL CORPORATION TO PACIFIC REFINING COMPANY, A WHOLLY OWNED SUBSIDIARY OF CIC INDUSTRIES CORPORATION WHICH IS A WHOLLY OWNED SUBSIDIARY OF COASTAL STATES GAS CORPORATION, EFFECTIVE AUGUST 18, 1976.
5. AUTHORIZE THE STATE LANDS DIVISION AND THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL STEPS NECESSARY, INCLUDING LITIGATION, TO EFFECT THIS TRANSACTION.

Attachment: Exhibit "A"

SYMBOL "A"

containing parcels of land located in the City of San Pablo
County, State of California and being more particularly described as
follows:

PARCEL 1

A strip of submerged land 50 feet wide by 150 feet on each side of the
following described centerline:

COMMENCING at the most northerly corner of Parcel 2 as shown
on that Parcel Map No. 14-1 on file in the office of the county
recorder of said county; thence S 0° 00' W 150.58 feet along
the Agreed Boundary line as shown on said parcel map, to the
TRUE POINT OF BEGINNING; thence N 47° 47' 18" W 50 feet;
thence S 10° 09' 18" E 50 feet to a point designated as
Point "A" for the purposes of this description and the end of
the here-in-described centerline.

PARCEL 2

BEGINNING at the above-mentioned Point "A" thence S 77° 00' 30"
E 712.00 feet; thence S 12° 24' 30" E 400.00 feet; thence S 77°
00' 30" W 1300.00 feet thence S 12° 24' 30" E 400.00 feet; thence
N 77° 00' 30" E 588.00 feet to the point of beginning.

This description base the California Coordinate System Zone 5.

END OF DESCRIPTION

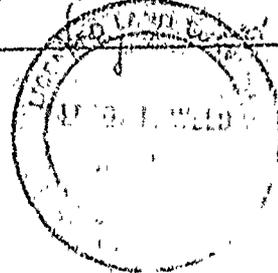
Prepared

J. Colvin

Checked

[Signature]

Reviewed



Date

5/1/52