

The Commission No. 36
was approved by the Commission
No. 36 on 6/30/77 State Lands
Commission, No. 36 of 3 CALENDAR ITEM
to 6 at its 6/30/77
meeting. 36.

6/77
PRC 3414.1
RCH (DME)

AUTHORIZATION OF ATTORNEY GENERAL TO FILE SUIT FOR RECOVERY OF
BACK RENTALS AND FOR OTHER APPROPRIATE RELIEF IN CONNECTION
WITH BREACH BY PACIFIC REFINING COMPANY OF LEASE PRC 3414.1

At its June 1976 meeting, the State Lands Commission authorized assignment and amendment of Lease PRC 3414.1, which authorizes the construction and operation of a wharf and appurtenant pipelines for the loading and unloading of petroleum products on State tide and submerged lands in San Pablo Bay, Contra Costa County.

The amendment to the lease provides for volumetric rent, further providing that rent shall not be charged on a commodity if rent has already accrued under the lease on that identical commodity. This provision is in accord with section 2007(b)(1) of the Commission's regulations. A dispute has arisen concerning the meaning of the term "identical commodity". The lessee, Pacific Refining Company, contends that fuel oil and diesel oil are commodities identical to crude oil under the terms of the lease, and that where rental has been charged for crude oil coming in to their refinery, rental does not accrue on the refined products and derivatives of this crude oil -- fuel oil and diesel oil -- when these commodities pass out over the leased land after refining. The State Lands Division and the Attorney General's Office disagree that the respective commodities are identical and have concluded that rent should therefore be charged on fuel oil and diesel oil as well as crude oil.

To date, Pacific Refining Company has withheld rental payments on fuel oil and diesel oil, and it has advised the Division that it intends to continue withholding rent on these commodities in the future, in accordance with its interpretation of the lease. The Division estimates that the rentals so withheld will total approximately \$20,000.00 over the course of a year. An exchange of correspondence extending over several months has failed to resolve the dispute, and it therefore appears that the Commission's only recourse is litigation.

IT IS RECOMMENDED THAT THE COMMISSION:

AUTHORIZE THE OFFICE OF THE ATTORNEY GENERAL TO FILE SUIT FOR THE RECOVERY OF BACK RENTALS AND FOR OTHER APPROPRIATE RELIEF IN CONNECTION WITH THE BREACH BY PACIFIC REFINING COMPANY OF LEASE PRC 3414.1.

EXHIBIT: A - Location Map

A 11

S 7