STATE OF CALIFORNIA

Minutes of the meeting of the
State Lands Commission
Sacramento, California

APPEARANCES

Commissioners Present:

Kenneth Cory, State Controller, Chairman
David Ackerman, Commission-Alternate for Mike Curb, Lieutenant Governor
Roy Bell, Commission-Alternate for Mary Ann Graves, Director of Finance

Staff Members in Attendance

William F. Northrop, Executive Officer
James F. Trout, Assistant Executive Officer
R. S. Golden, Chief, Division of Land Management and Conservation
D. J. Everitts, Chief, Division of Energy and Mineral Resources Development
W. M. Thompson, Chief, Division of Long Beach Operations
Kazumi B. Yoneyama, General Auditor III

Representing the Office of the Attorney General

Dennis Eagan, Deputy Attorney General
Robert Collins, Deputy Attorney General

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MINUTES OF THE STATE LANDS COMMISSION
MEETING OF

April 24, 1980

The regular meeting of the State Lands Commission was called to order by Chairman Kenneth Cory at 10:03 a.m. in Room 6031, State Capitol, Sacramento.

Also present were Commission Alternates David Ackerman, representing Commissioner Mike Curb, Lieutenant Governor; and Roy Bell, representing Commissioner Mary Ann Graves, Director of Finance.

The minutes of the meeting of March 19, 1980 were approved as presented.

EXECUTIVE OFFICER'S REPORT

Report by the Office of the Attorney General

Mr. Dennis Eagan, Deputy Attorney General, reported on the following cases:

A. Western Oil and Gas, et al, v. Cory W 503.866

It was argued in the Court of Appeal for the Third District in Sacramento. A decision has not been made.

B. Pariani v. State W 503.737

This case was argued the previous week in San Francisco before the First District Court of Appeal; however, a decision has not been rendered.

Report from William John Lamont, Special Counsel; Washington, D.C.

Mr. Lamont reported on the status of the oil issues which his firm has been monitoring in Washington, D.C.

Chairman Kenneth Cory asked if there was a possibility that the favorable treatment being given to Alaska would be altered. Mr. Lamont stated it was likely. He stated there was a hearing the previous week before the head of the Office of Hearings and Appeals, Mr. Mel Goldstein. Mr. Goldstein rejected the request on the grounds he did not have the authority to grant it but he instructed the complainants on how to file so he could grant it. In addition, Mr. Goldstein sent a formal memorandum to the Emergency Regulatory Administration stating that the special Alaskan treatment should be withdrawn.

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Mr. Lamont also discussed the President's import proclamation which recently caused a great deal of controversy. In addition to a possible lawsuit against the proclamation being considered by private interests, the Congress is proposing a joint resolution to declare it null and void. Also, the Subcommittee on Government Operations issued a subpena to Secretary of Energy Charles Duncan requesting an 18-inch stack of documents prepared by DOE as background for the import proclamation. However, that stack was subsequently sent to the White House with the view it might be claimed as executive privilege. Later on in his report, Mr. Lamont explained the import program to the Commission.

Another issue he discussed was the International Energy Agency with the impositions of sanctions on Iran and the request of our allies to do likewise.

Mr. Cory asked when the entitlements program was scheduled to end. Mr. Lamont could not recall the exact date, but pointed out some variation of the program will continue.

At the conclusion of Mr. Lamont's report, Mr. Northrop proceeded with his report which is attached in its written form as Exhibit "A". Also attached as Exhibit "B" is Mr. R. S. Golden's report, Chief, Division of Land Management and Conservation.

Attachments: Exhibit "A" and "B".

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EXHIBIT "A"

EXECUTIVE OFFICER'S REPORT

OF

WILLIAM F. NORTHROP
EXECUTIVE OFFICER

APRIL 24, 1980

LONG BEACH LOCAL COASTAL PROGRAM LB ADMIN.

LAST WEEK THE EXECUTIVE OFFICER SENT A LETTER TO THE CITY OF LONG BEACH COMMENTING UPON THE CITY'S LOCAL COASTAL PROGRAM (LCP) RECENTLY APPROVED BY THE CITY COUNCIL. SUBSEQUENTLY, STAFF RECEIVED THE STAFF REPORT OF THE SOUTH COAST REGIONAL COASTAL COMMISSION ON THE CITY'S LCP. THIS REPORT RECOMMENDS APPROVAL OF THE LCP SUBJECT TO CERTAIN CONDITIONS. ONE OF THESE CONDITIONS, IF APPROVED, WOULD PRECLUDE NIGHT OIL DRILLING IN AREAS CLOSE TO RESIDENTIAL NEIGHBORHOODS OF THE CITY WITHIN THE COASTAL ZONE. AS THE STATE OF CALIFORNIA HAS A DIRECT INTEREST IN ANY REVENUES WHICH MAY BE DERIVED FROM OIL AND GAS PRODUCED FROM CERTAIN TIDELANDS WITHIN THE ALAMITOS BAY AREA WHICH ARE LOCATED CLOSE TO RESIDENTIAL AREAS OF THE CITY, IT IS THE STAFF'S INTENTION TO SEND A LETTER TO THE REGIONAL COMMISSION COMMENTING ON THIS CONDITION. THE PROVISIONS OF THE CITY'S REVISED OIL CODE RELATING TO THIS MATTER AS INCORPORATED IN THE LCP WERE ADOPTED AFTER EXTENSIVE PUBLIC HEARINGS IN CONJUNCTION WITH THE LCP PROCESS. IT IS STAFF'S OPINION THAT THE REQUIREMENTS OF THE CODE WILL MITIGATE, TO THE EXTENT FEASIBLE, THE EFFECTS OF OIL DRILLING AROUND THESE RESIDENTIAL NEIGHBORHOODS WITHOUT UNREASONABLY INCREASING THE COST OF SUCH DRILLING. A COMPLETE LIMITATION ON NIGHT DRILLING COULD DISCOURAGE DRILLING CONTRACTORS FROM BIDDING ON SUCH WORK, OR, IF THERE WERE

BIDDING, COULD INCREASE OIL DEVELOPMENT COSTS TO THE EXTENT THAT IT WOULD BE UNECONOMICAL TO DRILL. SUCH A SITUATION COULD COST THE STATE, NOT TO MENTION THE CITY, PRIVATE OWNERS IN THE AREA, AND OUR NATION, TO LOSE MUCH NEEDED OIL AND OIL REVENUES.

WESTSIDE INDUSTRIAL PARK STORM DRAIN UNIT 2A/SUBSIDENCE W 10292

ON DECEMBER 19, 1977, THE COMMISSION GRANTED PRIOR APPROVAL OF THE "SUBSIDENCE COSTS" FOR SECOND PHASE WORK TO REPLACE A PORTION OF THE WESTSIDE INDUSTRIAL PARK STORM DRAIN SYSTEM. THE APPROVAL WAS BASED ON A CONTRACT BID OF $1,208,000.00. DURING THE COURSE OF CONSTRUCTION, THE CITY HAS FOUND IT NECESSARY, FOR A NUMBER OF REASONS, TO AUTHORIZE EIGHT CHANGES TO THE CONTRACT WORK INCREASING THE CONTRACT COST BY A TOTAL OF $182,000, WHICH IS APPROXIMATELY EQUAL TO THE CONTINGENCY AMOUNT WHICH THE COMMISSION ORIGINALLY ALLOCATED TO THIS PROJECT.

RECENTLY, A NINTH CHANGE ORDER WAS CONSIDERED FOR $436,000. UPON LEARNING OF THIS INTENDED CHANGE, STAFF SENT THE CITY A LETTER, STATING THAT THIS ADDITIONAL WORK APPEARED TO INCLUDE SUBSTANTIAL CHANGES FROM THE SCOPE OF WORK GRANTED PRIOR APPROVAL AND, CONSIDERATION SHOULD BE GIVEN TO SUBMITTING THIS TO THE COMMISSION FOR AUGMENTED APPROVAL. IN RESPONSE, CITY REPRESENTATIVES CONTENDED THAT SUCH APPROVAL WAS NOT NECESSARY ON GROUNDS THAT THE ADDITIONAL WORK WOULD BE WITHIN THE SCOPE OF THE ORIGINAL PRIOR APPROVAL. THE CITY FURTHER CONTENDED THAT IT COULD NOT WAIT FOR COMMISSION APPROVAL AS THERE WAS AN IMMEDIATE

NEED FOR THE CHANGES IN ORDER TO KEEP THE CONTRACTOR ON THE JOB.

DURING THE MONTH OF APRIL, THERE HAVE BEEN A NUMBER OF DISCUSSIONS BETWEEN STAFF, THE OFFICE OF THE ATTORNEY GENERAL AND CITY REPRESENTATIVES RELATING TO THESE CHANGES. AT A MEETING HELD ON APRIL 17, 1980, CITY REPRESENTATIVES AGREED TO DELETE A PORTION OF THEIR PROPOSAL THUS LOWERING THE ADDITIONAL COSTS BY $128,000 TO $308,000. CITY REPRESENTATIVES ALSO ASSURED THE STAFF THAT ALL INFORMATION NECESSARY TO DETERMINE THE APPROPRIATENESS OF THE OTHER TWO CHANGES WOULD BE PROVIDED AND INDICATED THAT THE CITY UNDERSTANDS ITS RESPONSIBILITY, AS TRUSTEE, TO EXERCISE DILIGENCE IN ITS CONTROLLING COSTS IN SUBSIDENCE REMEDIAL PROJECTS.

A FULLER EXPLANATION OF THIS MATTER IS INCLUDED AS AN ADDENDUM OF THIS REPORT, A COPY OF WHICH IS IN FRONT OF YOU.

ATTACHMENT

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ADDENDUM TO EXECUTIVE OFFICER'S REPORT W 10292

CITY OF LONG BEACH'S AMENDED PROPOSAL
TO PERFORM SUBSIDENCE REMEDIAL WORK -
WESTSIDE INDUSTRIAL PARK STORM DRAIN UNIT 2A

On December 19, 1977, the Commission granted prior approval of the "subsidence costs" proposed to be expended for second phase work to replace a portion (designated Unit 2A) of the Westside Industrial Park storm drain system. The approval was based on the low contractor bid of approximately $1,208,000.00.

Prior to now and during the course of construction, the City has found it necessary, for a number of reasons, to authorize eight changes to the contract work. In each instance the City notified the staff of the changes and was subsequently advised that the changes were within scope of work considered by the Commission in granting prior approval. These authorized changes increased the contract cost by a total of $182,000 which is approximately equal to the contingency amount which the Commission allocated to this project in its prior approval.

It recently came to the attention of staff that the Long Beach City Council intended to authorize a ninth change order, this in the amount of approximately $436,000. Upon learning of this intended change, staff sent the City a letter dated April 4, 1980, stating that this additional work appeared to include substantial changes from the scope of work granted prior approval and, therefore, should be submitted to the Commission for augmented approval if reimbursement was expected. In response City representatives contended that such approval was not necessary on grounds that the additional work would be within the scope of the original prior approval. The City further contended that it could not wait for Commission approval as there was an immediate need for the changes in order to keep the contractor on the job.

The additional work proposed by the City had three major elements. The first would authorize the contractor to jack storm drain pipes under the Southern Pacific railroad tracks at two locations instead of placing such pipes using the open cut construction method which had originally been specified in the contract. This change would result in a net increase in cost of $273,000. The second change would authorize additional compensation be paid to the contractor for delays, errors in drawings, extra work and all other claims which the

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contractor may have against the City. This change would result in a net increase in cost of $55,000. The third major change involved the addition of a 408 foot storm drain line in an area outside of the Harbor District and the deletion of a 181 foot temporary line which had been originally specified in the contract. This change would have resulted in a net increase in cost of $108,000.

During the month of April there have been a number of discussions between staff, the Office of the Attorney General and City representatives relating to whether these changes would qualify as "subsidence costs" and, if so, whether augmented prior approval of them by the Commission was necessary. So far as the change in construction method from the open cut to jacking and the additional compensation for the contractor's claims against the City were concerned, staff raised the question of whether the additional costs for these matters could have been avoided if the City had been more diligent in its control of the project and in its enforcement of its rights under the contract and against Southern Pacific Transportation Company. It should be noted that in August 1978 Southern Pacific authorized the open-cut method of construction for this Project; in January of this year, this consent was rescinded and the jacking method was suggested. So far as the additional storm drain line was concerned, staff questioned whether this qualified as a "subsidence cost" since it was to be built outside of the Harbor District and for purposes of draining areas, also outside of the Harbor District.

At a meeting held on April 17, 1980, City representatives agreed to delete the storm drain line from the proposed additional work and to not reinstate the temporary line which had been previously deleted; this lowers the additional costs by $128,000 to $308,000. These deletions were made with the understanding that the City may come back to the Commission at some later date with a request for prior approval of this or similar work; at such time the Commission can determine the appropriateness of such a request. At the meeting City representatives, in a spirit of cooperation, also assured the staff that all information necessary to determine the appropriateness of the other two changes would be provided. The City contends that these changes were necessitated primarily by unforeseen circumstances beyond its control. As was indicated in the April 15, 1980, letter from the Port relating to the Sprinkler System Replacement Project (the closing of which the Commission is also considering at this meeting), the City understands its responsibility, as trustee, to exercise diligence

in its control subsidence remedial projects. By letter dated April 18, 1980, from the Long Beach City Attorney's Office, the City explains the circumstances which have led up to the present situation. In that letter the City also indicates that it will, after further investigation, attempt to persuade Southern Pacific to allow the open cut method of construction as originally promised. If cooperation is not forthcoming, the City will then determine whether it has any legal claims for damages against the railroad company and, if so, will pursue them to the State's benefit.

In view of the City's deletion of the additional storm drain line and representations made in its letter of April 18, 1980, staff stated it would not insist that the changes for jacking and contractor's claims be submitted to the Commission for augmented prior approval. Upon final review and audit of this Project, staff will not deny reimbursement of these additional costs on grounds that they lack prior approval; however this shall not preclude staff from questioning the propriety of the costs and, if appropriate, recommending their denial on other grounds. To avoid this type of situation in the future, the staff intends to establish clearer guidelines to put the City on notice of the circumstances where it will be expected to seek augmented prior approval of projects in which there are significant changes, including, as occurred in this case, substantial increases in costs.

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By. R. S. Golden

EXHIBIT "B"

REPORT ON COASTAL MATTERS W 9777.1

PROPOSED COAST GUARD SAFETY FAIRWAY SEPARATION SCHEME

THE COAST GUARD IS CURRENTLY CONSIDERING TANKER TRAFFIC LANES OFF SOUTHERN CALIFORNIA. ONE PROPOSAL IS TO HAVE TRAFFIC LANES RUNNING FROM POINT ARGUELLO THROUGH THE SANTA BARBARA CHANNEL TO THE LOS ANGELES - LONG BEACH PORTS. ANOTHER PROPOSAL WOULD BE TO TAKE TANKER TRAFFIC OUTBOARD OF THE CHANNEL ISLANDS TO A POINT SOUTH OF SAN MIGUEL ISLAND AND THENCE EASTWARD TO THE PORTS. IN ADDITION FOUR SAFETY FAIRWAYS ARE PROPOSED WHICH ASSUME THAT THE ALTERNATIVE PLAN UTILIZING THE CHANNEL WILL BE ADOPTED.

SINCE THE STATE COASTAL COMMISSION WILL ULTIMATELY HAVE TO MAKE A CONSISTENCY DETERMINATION ON WHICHEVER ALTERNATIVE THE COAST GUARD PLANS TO ADOPT, YOUR STAFF RAISED THE ISSUE FOR DISCUSSION AT THIS EARLY DATE. IT IS OUR POSITION, BASED ON EXTENSIVE INPUT FROM ADMIRAL HIGBEE, THAT THE LANES SHOULD BE LOCATED OUTBOARD OF THE CHANNEL ISLANDS FOR MAXIMUM SAFETY AND THAT THE SO-CALLED "SAFETY FAIRWAYS" WILL ONLY INCREASE RISKS.

IT IS OBVIOUS FROM INITIAL DISCUSSIONS THAT THE ISSUE WILL BE CONTROVERSIAL. STAFF OF THE COASTAL COMMISSION ARE OPPOSED TO THE OUTSIDE-THE-CHANNEL PROPOSAL BECAUSE THEY FEEL

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THAT THE CHANNEL ROUTE WILL BUTTRESS THEIR POSITION FOR NO FURTHER OIL DEVELOPMENT IN THE CHANNEL. THERE HAVE BEEN INDICATIONS THAT THE STEAMSHIP OPERATORS WOULD PREFER THAT THE OIL TANKERS UTILIZE THE CHANNEL PRESUMABLY SO THAT THEY WOULD NOT HAVE TO SHARE THE LANES WITH THE TANKERS. THE COAST GUARD SEEMS PRE-DISPOSED TO ADOPT THE CHANNEL ROUTES.

OUR POSITION IS THAT A ROUTE OUTSIDE THE CHANNEL ISLANDS WILL PROVIDE A GREATER RESPONSE TIME IN CASE OF CASUALTY THAN A CHANNEL ROUTE. THE OFFSHORE ISLANDS COULD PROVIDE A BUFFER. THE INBOARD ROUTE REQUIRES EIGHT HOURS OF CAREFUL PILOTING WHILE THE OUTBOARD LOCATIONS DO NOT REQUIRE SUCH STRINGENT OPERATIONS. THE FOUR SAFETY FAIRWAYS PROPOSED AS COROLLARIES TO THE INBOARD ROUTES WOULD IN TWO INSTANCES, PREVENT DEVELOPMENT OF TWO OIL LEASES NECESSITATING LARGE PAYMENTS TO THE HOLDERS OF THE TWO LEASES.

FURTHER REPORTS WILL BE MADE AS THIS MATTER PROCEEDS.

CONSIDERATION OF SB 664 (NIELSEN) BY SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION W 5762.6

THIS LEGISLATION SPONSORED BY THE TITLE INSURANCE INDUSTRY WOULD PURPORT TO CONFER UNRESTRICTED TITLE TO PURCHASERS OF SWAMP AND OVERFLOWED LANDS AND THEIR SUCCESSORS. THE BILL AS DRAFTED WOULD ATTEMPT TO CURE TITLES TO THESE S & O LANDS WHICH MAY BE IN FACT TIDE AND SUBMERGED LANDS. THE OLD S & O PATENTS WERE NOTED FOR THE FRAUDULENT MEANS BY WHICH THEY WERE OFTEN CONVEYED.

SENATOR NIELSEN, THE AUTHOR, REQUESTED THAT BCDC RECONSIDER ITS OPPOSITION STANCE ADOPTED LAST YEAR AND FURTHER REQUESTED THAT MR. SEAN MCCARTHY, LOBBYIST FOR THE TITLE INDUSTRY, EXPLAIN THE BILL AS NOW AMENDED TO BCDC. AFTER HIS PRESENTATION, BCDC COMMISSIONERS POINTED OUT A NUMBER OF DEFECTS STILL REMAINING IN THE BILL. THE COMMISSION REFUSED TO RECONSIDER ITS PRIOR OPPOSITION TO THE MEASURE.

RECORD OF ACTION TAKEN BY THE

STATE LANDS COMMISSION

AT ITS MEETING OF April 24, 1980

During the meeting, the recommendations of the staff relative to Calendar Items C2, C3, C4, C6, C7, C8, C9, C10, C11, C12, C13, C14, C15, C16, C17, C18, C19, C20, C21, C22, 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, 35, 37, 39, 40, 41, and 42 were adopted as resolutions of the Commission by unanimous vote.

Commission action on Calendar Items C5, 23, and 36 are set forth on pages 664, 749, 819.

Calendar Items C1, 33, and 38 were withdrawn from the agenda prior to the meeting.

The Status of Major Litigation is set forth in the Executive Officer's Report on Page 633.

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