MINUTE ITEM

This Calendar Item No. 38 was approved as Minute Item 38 by the State Lands Commission by a vote of 2 to 1 at its August meeting.

CALENDAR ITEM

38

8/20/81
W 22649
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Horn
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REVIEW AND MODIFICATION OF REGULATIONS
IN TITLE 2, DIVISION 3, CHAPTER 1,
ARTICLES 1, 2, 2.1, 2.5, 5, 6 and 9

Pursuant to the Commission's authorization of January 26, 1981, (Minute Item No. 38) and in compliance with AB 1111 (Government Code Section 11340, et seq.), staff has conducted a review of the Commission's surface-use regulations. In keeping with the spirit and intent of AB 1111, staff proposed substantial changes, and in some cases, outright repeal of some of the existing regulations. Notice of the proposed changes was published in the Notice Register on April 1, 1981. Notices were also published in major regional newspapers and mailed to persons who had expressed interest. Public hearings on the proposals were held in San Francisco, Sacramento and Long Beach on May 19, 20 and 21.

The purpose of these hearings was to provide the public with ample opportunity to make statements, contentions or arguments, both oral and written, regarding the proposed changes. No persons appeared at the public hearings to offer comments in opposition to the proposals.

A summary of the process called a "Final Statement of Reasons" is attached hereto as Exhibit "B" and by reference made a part hereof.

The Final Statement of Reasons summarizes two letters of comment received on the proposals. These letters from McCutchen, Black, Verleger and Shea, representing the Western Oil and Gas Association (WOGA) and Exxon Company U.S.A., are included herein by reference and are on file in the principal office of the Commission. The Final Statement of Reasons also includes responses to these comments together with support for why the Commission rejected those portions of the comments not resulting in changes to the regulations.

Based upon the materials contained in the rule-making file, together with comments received during the public hearing process, staff believes that the regulations proposed for adoption meet the statutory requirements of "necessity", "authority", "clarity", "consistency" and "reference".

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EXHIBITS:

A. Proposed Changes to Title 2, Division 3, Chapter 1, Articles 1, 2, 2.1, 2.5, 5, 6, and 9.

B. Final Statement of Reasons

IT IS RECOMMENDED THAT THE COMMISSION:

1. DETERMINE THAT THERE HAS BEEN COMPLIANCE WITH GOVERNMENT CODE SECTIONS 11346.4 (PUBLICATION AND NOTICE) AND 11349.7 (REVIEW) FOR THE PURPOSE OF MODIFYING ITS REGULATIONS IN TITLE 2, DIVISION 3, CHAPTER 1.

2. DETERMINE THAT THERE ARE NO STATE-MANDATED COSTS OR SAVINGS TO ANY STATE AGENCIES OR LOCAL AGENCIES OR SCHOOL DISTRICTS IN THESE REGULATIONS THAT REQUIRE REIMBURSEMENT UNDER SECTION 2231 OF THE REVENUE AND TAXATION CODE INASMUCH AS COMPLIANCE WITH THESE REGULATIONS BY GOVERNMENTAL ENTITIES IS APPLICABLE ONLY UPON THEIR VOLUNTARY USE OF LANDS UNDER THE COMMISSION'S JURISDICTION.

3. APPROVE FOR FILING WITH THE OFFICE OF ADMINISTRATIVE LAW THE FINAL STATEMENT OF REASONS ATTACHED HERETO AS EXHIBIT "B", WHICH STATEMENT IS MADE IN COMPLIANCE WITH GOVERNMENT CODE SECTION 11346.7.

4. ADOPT FOR FILING WITH THE OFFICE OF ADMINISTRATIVE LAW THOSE CHANGES TO ITS REGULATIONS SET FORTH IN EXHIBIT "A" ATTACHED HERETO AND BY REFERENCE MADE A PART HEREOF, WHICH CHANGES SHALL BE EFFECTIVE 30 DAYS AFTER FILING WITH THE SECRETARY OF STATE.

5. AUTHORIZE STAFF TO TAKE ALL STEPS NECESSARY TO GIVE EFFECT TO THE ABOVE APPROVALS, DETERMINATIONS AND ADOPTIONS.

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EXHIBIT "A"

CAL. ADM. CODE, TITLE 2, DIVISION 3

ARTICLE 1 IS REPEALED IN ITS ENTIRETY AND THE FOLLOWING NEW ARTICLE 1 IS SUBSTITUTED IN ITS PLACE:

Article 1. General Provisions

1900. Definitions. The following definitions shall apply to this Chapter unless otherwise provided.

(a) The term "commission" means the State Lands Commission.

(b) The term "applicant" includes any person who files an application under these regulations.

(c) The term "person" includes any individual, firm, partnership, business entity, business trust, association, corporation, or governmental entity or agency.

(d) The term "lease" includes a permit, right-of-way, easement, license, compensatory agreement, or other entitlement of use.

(e) The term "structure" means any manmade construction.

(f) The term "submerged lands" means the area lying below the elevation of ordinary low water in the beds of all tidal and nontidal navigable waters.

(g) The term "tidelands" means the area lying between the elevations of ordinary low water and ordinary high water on lands subject to tidal action.

(h) The term "uplands" shall mean lands bordering on navigable waterways.

(i) The term "school lands" refers to all Sections 16 and 36 granted to the State for the benefit of common schools by Chapter 145 of the Federal Statutes of 1853.

(Added 8/18/81)

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(j) The term "lieu or indemnity lands" refers to those lands acquired by the State in place of school lands it previously acquired or school lands to which it did not receive title because they were either mineral in character, had not been sectionalized, or were subject to prior established rights.

(k) The terms "merchandise", "product" and "commodity" are interchangeable and shall include, goods, wares, chattels, personal property of every description, cargo, freight, mail, vessel's stores and supplies, articles, matter and material.

AUTHORITY: PRC 6105, 6108, 6002, 6301, 6501, 3 Cal. 3d 462, 478 (tide and submerged lands)

REFERENCE: PRC 6301, 6501

1901. Office of Commission. The principal office of the Commission is 1807 13th Street, Sacramento, California 95814, telephone (916) 445-5303. The extractive development office is located at 100 Oceangate, Suite 300, Long Beach, California 90802, telephone (213) 590-5201. Applications for exploration or extraction of minerals, oil and gas, or geothermal resources shall be sent to the extractive development office. All other applications shall be sent to the principal office.

AUTHORITY: PRC 6105, 6108, 6102, 6103.2, 6216, State Administrative Manual Section 1081

REFERENCE: PRC 6102

1902. Meetings of the Commission. The commission shall meet at Sacramento on the last Thursday of each month unless, upon due notice, the date and place of meeting are otherwise designated by at least two members.

AUTHORITY: PRC 6105, 6108, 6104

REFERENCE: PRC 6104

1903. Operating and Administrative Duties. The staff of the State Lands Commission shall perform such duties and functions as may be directed by the Commission.

AUTHORITY: PRC 6102, 6103, 6216, 6103.6

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REFERENCE: PRC 6102, 6216

1904. Application requirements and priority. Application requirements and priority shall be as set forth in Public Resources Code Sections 6801 and 6223 respectively.

AUTHORITY: PRC 6105, 6108, 6801, 6223, 6216, 6301, 6501.2, GC 65940

REFERENCE: PRC 6223, 6501.2

1905. Filing and Processing Fees. Filing and processing fees shall be paid by applicants at the time of filing an application as follows:

(a) Filing fee $25.00

(b) Processing fee for Commission services computed and charged as follows:

(1) A non-refundable expense deposit for routine or uncomplicated services based on an average cost of such services; or

(2) A refundable expense deposit for non-routine and complicated services based on the estimated costs of such services. Any unexpended portion of such expense deposit shall be refunded to the applicant;

(3) An additional expense deposit for additional or unanticipated services, to be paid within 21 days of written notice being mailed to the applicant. Any unexpended portion of such expense deposit shall be refunded to the applicant.

AUTHORITY: PRC 6105, 6108, 6218, 6214, 6502, 6321, 6309, 6503.5, 6703, 7706

REFERENCE: PRC 6218, 6214, 7706

1906. Guaranty Deposits. The Commission may require deposits of either bond, cash or other acceptable security to insure compliance with terms and conditions of bids, leases, contracts, or any other agreements.

AUTHORITY: PRC 6105, 6108, 6301, 6501.2, 6829(d), 6005, 6405, 6899

REFERENCE: PRC 6501.2, 8629(d)

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1907. Insurance. The Commission may require insurance against such risks and in such amounts that it may determine to be within the best interests of the state.

AUTHORITY: PRC 6105, 6108, 6301, 6501.2, 6405, 6829, 6899, 6005

REFERENCE: PRC 6899, 6501.2, 6829

1908. Reservations.

(a) The Commission may reject any application or bid or refuse to execute any lease or other document or take or refrain from taking any other action when it determines such conduct to be in the best interest of the State.

(b) The Commission may deviate from the regulations in this Chapter if it determines such deviation to be in the best interest of the State.

AUTHORITY: PRC 6301, 6502, 6811

REFERENCE: PRC 6836, 7059, 6005, 6501.2, 6106

1909. Bidding Procedure.

(a) Except as otherwise provided in this chapter, when competitive bidding is required, it shall be conducted generally as follows:

(1) The Commission shall cause a notice of intent to receive bids to be published at least once in a newspaper of general circulation in the county in which the lands, interest or project is located and may have such notice published at least once in a newspaper of general circulation in the City of Los Angeles, or San Francisco, or Sacramento. Such notice shall specify the lands or interest (oil, gas or mineral lease; easement; timber; land; etc.) for sale or project (public works or consultant contracts, oil, gas or mineral exploration, etc.) for bid, the time and place for the receipt and opening of bids, and the availability of appropriate approved bid packages and forms at the office of the Commission.

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(2) The Commission shall at the specified time and place publicly open or have opened the sealed bids and shall award the highest or lowest responsible bidder, as appropriate, unless, in the opinion of the Commission such award is not in the best interest of the State, in which case the Commission may reject all existing bids and call for new ones or terminate bidding.

(3) The Commission shall have broad discretion as to whether a bidder is "responsible" based on what it deems to be in the best interest of the State.

(4) Each bid shall be a firm bid, irrevocable for a period of 30 days from the date of opening.

(b) Bidders shall bear all reasonable expenses incurred by the Commission for bid processing and award including costs of approval, advertising and environmental review, in accordance with terms set forth in the approved bid package.

AUTHORITY: PRC 6105, 6108, 6218, 6005, 6811, 6827, 6836, 6852, 7052, 7053, 6405, 6406, 6501.1, 6501.2, 6815.2, 6827, 6827.1, 6834, 6835, 6871.3, 6874, 6900, 6912, 6992, 6993, 7059, 7301, 7361, 7501, 7604

REFERENCE: PRC 6005, 6811, 6827, 6836, 6852, 6827, 6834, 6835, 6871.3, 6912, 6992, 7059.

1910. Execution and Delivery of Documents. All documents to be executed by applicant shall be signed by the applicant and certified, witnessed or acknowledged as required, prior to their execution and delivery by the Commission.

AUTHORITY: PRC 6105, 6108, 6504, 6106, 6108

REFERENCE: PRC 6106, 6108

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ARTICLE 2 IS REPEALED IN ITS ENTIRETY AND THE FOLLOWING NEW ARTICLE 2 IS ADOPTED IN ITS PLACE:

Article 2. Leasing or Other Use of Public Lands

2000. General.

(a) This article applies to the leasing of all lands under the Commission's jurisdiction for all surface uses except the exploration for or extraction of natural resources including minerals, oil, gas or other hydrocarbons, or geothermal resources or any other natural resources, excluding timber.

(b) Leases or permits may be issued to qualified applicants and the Commission shall have broad discretion in all aspects of leasing including category of lease or permit and which use, method or amount of rental is most appropriate, whether competitive bidding should be used in awarding a lease, what term should apply, how rental should be adjusted during the term, whether bonding and insurance should be required and in what amounts, whether an applicant is "qualified", etc. based on what it deems to be in the best interest of the State.

(c) Leases or permits for tide or submerged lands shall generally only be issued to riparian or littoral upland owners or use right holders, provided however that such leases or permits may be granted to the best qualified applicant irrespective of riparian or littoral status.

(d) Leases or permits for school, lieu or indemnity lands shall be for value or value enhancement purposes.

AUTHORITY: PRC 6105, 6108, 6501, 6501.1, 6501.2, 6005, 6216, 6301, 6321, 6309

REFERENCE: PRC 6501.1, 6501.2, 6216

2001. (a) Applications for leases or permits under this article are available from and shall be submitted to the principal office of the Commission.

AUTHORITY: PRC 6105, 6108, 6501, 6501.2, 6502, 6223, 6321

REFERENCE: PRC 6502, 6321

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2002. Categories of leases or permits.

(a) General Lease: Uses may include the following:

(1) Commercial: Income producing uses such as marinas, restaurants, clubhouses, recreation piers or facilities, docks, moorings, buoys, helicopter pads, decks or gas service facilities.

(2) Industrial: Uses such as oil terminals, pipelines, piers, wharves, warehouses, stowage sites, moorings, dolphins and islands;

(3) Right of Way: Uses such as roadways, power lines, pipelines or outfall lines.

(b) General Permit: Uses may include the following:

(1) Public agency uses such as public roads, bridges, recreation areas or wildlife refuges having a statewide public benefit;

(2) Public Resources Code Section 6321 protective structures such as groins, jetties, sea walls, breakwaters and bulkheads;

(3) Non income producing uses such as piers, buoys, floats, boathouses, docks, waterski facilities, and campsites not qualifying for a private recreational pier permit under 2002(f). Other uses may include campsites, cabins, dwellings, arks, houseboats, or boathouses provided that when such uses are located on sovereign lands that such uses are not found to be inconsistent with public trust needs.

(c) Grazing Lease: Use includes the feeding of livestock on forage.

(d) Agricultural Lease: Uses may include farming, silviculture and horticulture.

(e) Forest Management Agreement: Uses may include reforestation, improvement of timber growth and soil productivity, vegetation control, reduction of fire and erosion hazards, insect or disease control or any other use that enhances the value of lands subject to the agreement.

(Revised 8/18/81)

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(f) Private Recreational Pier Permit: Use is limited to any fixed facility for the docking or mooring of boats constructed for the use of the littoral landowner, as specified in Public Resources Code Section 6503.5, and does not include swimming floats or platforms, sun decks, swim areas, fishing platforms, residential, recreational dressing, storage or eating facilities or areas attached or adjacent to recreational piers, or any other facilities not constructed for the docking or mooring of boats.

(g) Salvage Permit: Use includes the salvage of all abandoned property over and upon ungranted tide and submerged lands of the State which property belongs to the State and is under the Commission's jurisdiction pursuant to Public Resources Code Section 6309. The Commission may retain or sell any or all salvaged property or may allow the permit applicant to retain it.

AUTHORITY: PRC 6105, 6108, 6501, 6501.1, 6501.2, 6201, 6210.3, 6221, 6309, 6321, 6322

REFERENCE: PRC 6501.1, 6201, 6309, 6321, 6503.5

2003. Rental.

(a) Rental for the various categories of uses shall be generally as follows:

(1) Commercial Use: An annual rental based on any one or combination of the following rental methods, with a minimum rental of $250:

(A) A percentage of annual gross income (the percentage being based on an analysis of the market for like uses and other relevant factors);

(B) 9% of the appraised value of the leased land;

(C) The volume of commodities passing over the lease premises.

(2) Industrial Use: An annual rental based on any one or combination of the following rental methods with a minimum rental of $250:

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(A) 9% of the appraised value of the leased land together with 2¢ per diameter inch per lineal foot of pipelines and conduits on the leased premises;

(B) The volume of commodities passing over the lease premises.

(3) Right-of-Way Use: An annual rental based on any one or combination of the following rental methods with a minimum rental of $100:

(A) 9% of the appraised value of the leased lands, together with compensation for any damage caused to such lands;

(B) 2¢ per diameter inch per lineal foot;

(C) The volume of commodities passing over the lease premises.

(4) General Permits: Annual rental shall be based on 9% of the appraised value of the leased lands with a minimum rental of $50.

(A) No rental shall be charged for public agency use of tide and submerged lands if the Commission at its sole discretion, determines that a statewide public benefit accrues from such use.

(B) Monetary rental for Public Resources Code Section 6321 protective structures may be waived if the Commission determines that a public benefit accrues from the installation of such structures.

(5) Private Recreational Pier Permits: Pursuant to Public Resources Code Section 6503.5 a rent free permit shall be issued to those applicants demonstrating their qualifications under that section as implemented by 2002(f).

(6) Grazing: An annual rental based on appraised value for the intended use.

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(7) Agricultural: An annual rental based on any one or a combination of the following rental methods with a minimum rental of $250:

(A) A percentage of annual gross income (the percentage being based on analysis of the market for like uses and other relevant factors);

(B) 9% of appraised value of the leased lands.

(8) Forest Management Agreements: Rental shall constitute enhancement of the land's value resulting from the use.

(9) Salvage Permit: Rental shall be as follows:

(A) A rental of $25.00 per annum per acre, computed on a whole or fractional basis, for the total acreage of the permit area; and

(B) 25% of the net salvage value up to $25,000 and 50% of all such value over that amount for all salvaged property the salvor is permitted to retain; or

(C) The net salvage value of any property the State retains less any rental to which it is entitled; and

(D) Such other consideration as may be deemed by the Commission to be in the best interest of the State.

(b) The following factors shall be considered by the Commission in determining which rental method should apply:

(1) The amount of rental the State would receive under various rental methods;

(2) Whether relevant, reliable and comparable data is available concerning the value of the land proposed to be leased;

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(3) Whether a particular method or amount of rental would effectively cause an applicant to use more competitive substitute land or to abandon its project altogether;

(4) Whether the land proposed to be leased has been classified as environmentally significant pursuant to Public Resources Code Section 6371.

(5) The monetary value of actual or potential environmental damage anticipated from an applicant's proposed use to the extent such damage is quantifiable;

(6) Other factors relating to the appropriateness of the proposed rental method.

(c) The following limitations shall apply to rental based on the volume of commodities passing over State lands:

(1) Rental shall not be imposed more than once for the identical commodity passing over the same State land if the ownership of that commodity has not changed.

(2) The rental rate for a right-of-way for passage of a commodity across State lands shall be made proportional to the percentage of the total length of the pipeline or conduit that such right-of-way comprises. For the purposes of this section, the total length of a pipeline or conduit shall be the length of the pipeline or conduit between two facilities, uninterrupted by another facility. "Facility" includes terminal, production, storage, refining, manufacturing, processing, mixing or intermixing facilities.

(d) Rental adjustment during the lease term shall be provided for as appropriate.

AUTHORITY: PRC 6105, 6108, 6503, 6504, 6503.5, 6309, 6321.2

REFERENCE: PRC 6321.2, 6503, 6504, 6503.5

2004. Term.

(a) The term for leases and permits including any optional renewal periods shall be no longer than necessary to accomplish the intended use or purpose.

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(b) The term shall be limited according to standard commercial practices with maximum terms as follows:

(1)	General Lease General Permit Forest Management Agreement	49 years
(2)	Agricultural Lease	25 years
(3)	Grazing Lease Private Recreational Pier Permit General Permit Recreational Use	10 years
(4)	Salvage Permit	1 year but extendable for one additional year.

AUTHORITY: PRC 6105, 6108, 6501, 6501.2, 6505.5, 6309, 6321, 6008

REFERENCE: PRC 6501.2, 6505.5

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ADOPT NEW ARTICLE 2.1 TO READ:

Article 2.1. Sale of Public Lands and Timber

2030. Sale Restrictions.

(a) Sales of tide and submerged lands are prohibited.

(b) Sales of school, lieu or indemnity lands are restricted as follows:

(1) No new purchase applications shall be accepted except those from public agencies, entities or utilities or under the circumstances determined by the Commission to be in the best interest of the State. Such sales may be accomplished with or without competitive bidding.

(2) The Commission on a selective basis may offer individual parcels for sale to the general public pursuant to competitive bidding on terms and conditions set forth in an approved bid package.

(3) An existing lessee on any parcel offered for sale shall have the right to match the highest bid.

AUTHORITY: PRC 6105, 6108, 7301, 7351, 6210.2, 6301, 6216, 7405, 7409, 7410, 7406, 7352, 7357, 7418, 6005

REFERENCE: PRC 7301, 6216, 7410, 7352, 7357

2031. Applications. Applications for purchase of lands or interests under this article shall be available from and shall be filed with the principal office of the Commission. Purchase applications shall be processed according to existing regulations; provided, however, that applications filed and accepted prior to the effective date of any sales moratorium shall be processed according to the rules and regulations in effect prior to the effective date of such sales moratorium.

AUTHORITY: PRC 6105, 6108, 7356, 7301, 7410, 6223, 6301, 7352, 7353, 7355, 7358

REFERENCE: PRC 7356, 6223

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2032. Sales Price.

The sale price of lands sold under this article shall be equal to or greater than the appraised fair market value of such lands.

AUTHORITY: PRC 6105, 6108, 7305, 7352, 7301, 7410, 7413

REFERENCE: PRC 7305

2033. Limitations. Sales of lands or interests under this article shall be without warranty as to the conditions or marketability of title and without any guarantee of legal access to such lands or interests.

AUTHORITY: PRC 6105, 6108, 7301, 6210.2, 6301

REFERENCE: PRC 6301

2034. Timber Sales.

(a) Timber sales shall be conducted pursuant to competitive bidding, on terms and conditions set forth in an approved bid package for a price of no less than appraised fair market value except that:

(1) sales of small volumes of timber valued at $25,000 or less or emergency salvage sales of fire, insect or disease damaged timber may be sold by direct solicitation of bids; and

(2) The removal of pre-commercial or dead or down trees for the purpose of stimulating the growth of residual trees or to reduce fire, insects, disease or other hazards may be conducted without charge.

(b) Payment shall be:

(1) based on an estimated volume of standing timber or when appropriate by log scale of the timber designated for sale by species; and

(2) made in cash in full at the time of bidder award for sales having a price of $25,000 or less, and

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(3) made in two or more installments covering separate cutting blocks for sales having a price greater than $25,000, the first payment to be made at the time of bidder award and subsequent payments to be made at specified times.

(c) Reforestation or rehabilitation may be required as a condition of sale.

AUTHORITY: PRC 6105, 6108, 7361, 6211, 6216, 6301

REFERENCE: PRC 7361, 6216

ARTICLE 2.5 IS REPEALED IN ITS ENTIRETY.

ARTICLE 5 IS REPEALED IN ITS ENTIRETY.

ARTICLE 6 IS REPEALED IN ITS ENTIRETY.
(ARTICLES 5 AND 6 COMBINED INTO NEW ARTICLE 2.1)

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ARTICLE 9 IS REPEALED IN ITS ENTIRETY AND THE FOLLOWING NEW ARTICLE 9 IS ADOPTED IN ITS PLACE:

Article 9.
Affirmation of Legislative Grantee Leases and Contracts

2800. General. The provisions of this Article shall apply only to those lessees, lenders, or contract holders who wish to secure Commission findings specified in Public Resources Code Section 6702(b) regarding leases, contracts or other instrument involving granted tide and submerged lands.

AUTHORITY: PRC 6105, 6108, 6701, 6702, 6703

REFERENCE: PRC 6702

2801. Procedure.

(a) Applicants desiring Commission findings under Public Resources Code 6702(b) shall:

(1) Complete in full and submit to the Commission, an application approved in form and content by the Commission; and

(2) Cause a grantee report, approved in form and content by the Commission to be completed in full and submitted directly by the legislative grantee; and

(3) Submit additional information as required if the application or grantee report are in any manner inadequate or incomplete.

(b) An inadequate or incomplete application or grantee report for which required additional information is not forthcoming shall be rejected.

(c) The 90-day time limitation specified in Public Resources Code Section 6704 shall commence to run when the application and grantee report, complete in all respects, have been received by the Commission.

(d) Approved application and grantee report forms referred to in this Article are available from and shall be submitted to the principal office of the Commission.

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AUTHORITY: PRC 6105, 6108, 6701, 6703, 6704

REFERENCE: PRC 6704

2802. Commission criteria. The Commission in determining pursuant to Public Resources Code Section 6702(b)(3) whether a lease, contract or other instrument is in the best interest of the State will consider whether the use, project or activity permitted by such instrument is:

(a) Consistent with current Commission policies, practices and procedures used for administering lands within its jurisdiction;

(b) economically viable, necessary and desirable;

(c) appropriate for developmental mix;

(d) conducive to public access;

(e) consistent with environmental protection;

(f) otherwise in the best interests of the state.

AUTHORITY: PRC 6108, 6105, 6701, 6702, 6005

REFERENCE: PRC 6701, 6702, 6005

2803. Approval Limitation. Approval by the Commission of any lease, contract or other instrument pursuant to this Article shall not constitute approval of any modification or amendment of such instrument made pursuant to the provisions of such instrument or otherwise. Separate approval shall be required for such modifications or amendments.

AUTHORITY: PRC 6105, 6108, 6701, 6706

REFERENCE: PRC 6706

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EXHIBIT "B"

FINAL

STATEMENT OF REASONS

(Government Code Section 11346.6, .7)

California Administrative Code, Title 2, Division 3,
Chapter 1, Articles 1, 2, 2.1, 2.5, 5, 6 and 9.

Division 6 of the Public Resources Code (specifically Sections 6203, 6301, 6309, 7301, 7361 and 7501) vests the State Lands Commission with exclusive jurisdiction over the State tidelands, submerged lands, swamp and overflowed lands, "school" and "lieu" lands and the activities thereon. It empowers the State Lands Commission to make and enforce all reasonable rules and regulations to carry out the provisions of the statutes.

Pursuant to this authority, the Commission has adopted rules and regulations governing the leasing of its lands, the sale or other disposition of its lands, the orderly salvage of abandoned property on State lands and procedures involving leases submitted to the Commission pursuant to P.R.C. Section 6701, et. seq.

With the passage of AB 1111 (Chapter 567, statutes of 1979) the Commission was directed to review its existing regulations to determine if they complied with the criteria

(Added 8/18/81)

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set forth in the statutes (G.C. Section 11349.1). Staff of the Commission has determined that the existing regulations (listed above) do not currently meet the statutory standards. Staff has therefore conducted certain analyses and studies of the regulations and has proposed certain changes and in some instances repeal of existing regulations. In arriving at its proposed modifications/repealers, the staff has conducted surveys of other large land managing entities including the major Ports and Harbors, and others.

Article 1 is being modified to reflect the general leasing requirements of the Commission. The intent of this Article is to set forth in brief form the minimum and typical requirements for use of State land and activities involving such land.

In arriving at the proposed changes in rental rates (Article 2), the Commission's staff has relied on interviews with other large public land holders, and a staff update of two consultant reports prepared for the Commission in the mid 1970's relative to rental rates of return, in addition to other materials available.

The volumetric rental set forth in this article is the subject of litigation in Western Oil and Gas Association, et al. v. Cory, et al., U.S. D.C. (E.D. Cal.), No. CIV S-76-513. However, the California Court of Appeal in 105 Cal. App. 3d,

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at pg. 554 has found the volumetric rental regulations both lawful and reasonably applied. The proposed new Article 2 modifies the language relating to volumetric rental but not the underlying principle.

In repealing Article 2.5 (Salvage) the staff has reviewed the history of salvage operations on State lands and finds that there is no necessity for a separate regulation governing salvage on State lands. A general statement on salvage permits and rental rates is included in new Article 2.

In repealing Article 5 (Sale of School and Swamp and Overflowed lands) the Commission's staff has again l ked at the necessity for the existing regulation and found that since a general moratorium exists on the sale of such lands, the existing Article should be repealed. In its place a new Article 2.1 is proposed which generally sets forth the restrictions on sale of school lands and prescribes general rules for the sale of timber.

Article 6 has been repealed because the procedures for handling the sale of vacant U.S. lands is substantially set forth in the statutes.

Article 9 is being modified to reflect the type of review the Commission feels is contemplated by P.R.C.

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6702(b). Application requirements are being removed from the Article and will be set forth in a form as prescribed by Government Code Section 65940 et. seq.

On April 1, 1981, notice of proposed changes to the Commission's Administrative Regulations was published in the Notice Register. Concurrently notice was published in the Sacramento Union, the San Francisco Chronicle and Examiner and the Los Angeles Times. Notice was also mailed to those persons who indicated interest in the Commission's land use regulations (In excess of 200+ persons). In accordance with the published notice, hearings were held in San Francisco on Tuesday, May 19, 1981, at 2:00 p.m. and 7:00 p.m.; Sacramento on Wednesday, May 20, 1981, at 2:00 p.m. and 7:00 p.m.; and on Thursday, May 21, 1981, in Long Beach at 2:00 p.m. and 7:00 p.m. No persons appeared at the hearings to offer comments regarding opposition to the proposed regulation changes.

The notice provided that written comments would be received by the Commission until May 29, 1981, in order to be considered in the rule-making record. The Commission received only one set of comments within the allowed comment period from McCuthen, Black, Verleger and Shea - on behalf of its client, the Western Oil and Gas Association (WOGA).

The Western Oil and Gas Association (WOGA) submitted a statement which contends that the Commission's regulations

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authorizing rentals based upon the volume of commodities passing over the leased land do not meet the following criteria of Government Code Section 11349: authority and reference (subds. (b) and (e)), consistency (subd. (d)), and necessity (subd. (a)). The contentions in the WOGA statement have been the subject of two court cases brought by WOGA and nine oil companies against the Commission, one action in State court and the other in federal district court. The Commission has prevailed in the State court case, which resolved adversely to WOGA most of the issues that are raised in its statement. The issues of federal constitutional law raised by WOGA are still pending in the federal court case. The arguments raised in the WOGA statement are not well-taken for the reasons set forth below.

A. Authority and Reference.

WOGA argues that the Commission has no authority to authorize collection of rent based upon volume, and that Section 6503 of the Public Resources Code limits the Commission to a flat annual rent that is a percentage of appraised fee value. This was precisely the issue that WOGA argued, unsuccessfully, before the State courts. After the superior court had ruled in the Commission's favor, WOGA appealed. The California Court of Appeal phrased the issue as follows: "(D)id the agency act within the scope of its delegated

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authority . . .?" (Western Oil and Gas Assocation, et al. v. State Lands Commission (1980) 105 Cal. App. 3d 554, 562) The Court found for the Commission on this issue, specifically noting that, under Public Resources Code Sections 6301 and 6501.2, the Commission has the power to lease lands "upon terms and conditions it deems in the best interests of the State" (id., at pp. 557, 563), and that the Commission "is also enpowered to make and enforce all reasonable and proper rules and regulations to carry out its responsibilities," citing Public Resources Code Section 6108 (id., at p. 557). In short, this contention has been rejected by the courts.

B. Consistency.

WOGA's argument on this point refers to the alleged infirmity of the Commission's volumetric regulations on several federal constitutional grounds. These issues are presently before the federal district court in Sacramento. The case will eventually result in a final judgment that is binding on both WOGA and the Commission. The Commission's legal position is fully set forth its brief that is on file in the principal office of the Commission (also a part of this rule-making file) and entitled, "Defendants' (1) Opening Brief in Support of Defendants' Motion for Summary Judgment, (2) Brief in Opposition to Plaintiffs' Motion for Summary Judgment, (3) Supporting Affidavits."

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WOGA argues in the litigation (1) that volumetric rental is a "tax" that is invalid under the import-export chause and the prohibition against duties of tonnage, and (2) that volumetric rental is per se, "unreasonable" and therefore an unreasonable burden on interstate and foreign commerce in violation of the commerce clause.

The Commission's response on the first point is that volumetric charges derived from the State's proprietary position as an owner of land and are rent for discrete parcels of State land, not taxes imposed by virtue of the State's general sovereign power to tax, unrelated to its ownership of property. The California Court of Appeal confirmed that when the State leases trust lands, "it is exercising a proprietary function . . . ." (Western Oil & Gas Association, et al. v. State Lands Commission, supra, 105 Cal. App. 3d at p. 566.)

On the second point, the Court of Appeal specifically determined that volumetric rentals were a reasonable means of collection rent. (Id., at p. 565.) If such rents are reasonable for lessees engaged in intrastate commerce, they are equally reasonable for those engaged in interstate or foreign commerce. WOGA's argument is not well-taken here either.

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C. Necessity.

WOGA argues that volumetric rents are not necessary because "less burdensome" rental modes (costing WOGA members less rent) are available to the Commission. The Commission successfully argued before the California Court of Appeal that the State is under no duty, in renting its land, to subsidize the oil companies by limiting itself to only one of the rental modes that are in use by public and private lessors generally (i.e., flat annual rents that are a percentage of appraised fee value). The seven-volume administrative record (also a part of this rule-making file) compiled by the Commission in the course of enacting the regulations amply establishes that volumetric rental is commonly employed in ground leases (1) by both private and public lessors, (2) as to improved and unimproved land, and (3) as to upland property and tide and submerged lands. In fact, volumetric rentals are employed by WOGA's member oil companies themselves in the form of the "gallonage" rentals that they charge their service station lessees. Volumetric rentals are a common and reasonable rental mode used in the rental market generally. The California Court of Appeal so determined in Western Oil & Gas Assocation, et al. v. State Lands Commission (1980) 105 Cal. App. 3d 554. The Court asked itself, "(W)as the agency action reasonable? (Id., at p. 562.) It concluded that it was.

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In summary, the greatest portion of the arguments raised by WOGA in its statement have already been rejected by the courts. The Commission is confident that WOGA's federal constitutional arguments will be rejected as well. The Commission has considered the WOGA statement and rejected the considerations that it raises for the reasons set forth. Exxon Company, U.S.A. submitted comments on Articles 1 and 2 of the Commission's regulations generally dealing with lease/permit administration. Exxon's comments indicated support for the Commission's effort in complying with the spirit and intent of AB 1111 and offered specific comments as detailed below:

Article 1, Section 1907: Exxon believes . . . "this language should be revised to remain consistent with existing statutory and regulatory provisions." They site Section 6829(c) of the P.R.C. as declarative of the scope and type of liability provisions appropriate for oil and gas leases.

Section 6829 (P.R.C.) reads: "Every oil and gas lease executed under this chapter shall include the following: (a) . . . (b) . . . (c) Provisions specifying methods of operation and standard requirements for carrying on operations in proper and workmanlike manner; the prevention of waste; the protection of the safety and health of workmen; and the liability of the lessee for personal injuries and

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property damage."

Our reading of this provision does not indicate the "scope" and "type" of liability contemplated by the legislature. It merely states that each oil and gas lease shall have provisions specifying the lessee's liability for personal injuries and property damage.

The Commission, in issuing oil and gas leases, must take into consideration the relative risk of the operations in order to determine acceptable limits of liability. We do not feel that Section 1907 gives the Commission "greater latitudy than contemplated by pertinent provisions of the Public Resources Code," as suggested by Exxon.

In addition, Article 1 applies to leasing/permitting activities of the Commission, generally. Article 3, Section 2100 et seq. discusses the issuing of oil and gas leases and exploration permits together with a discussion of indemnification of the State (2100 (f)(3).)

We feel that the Commission must have the ability to determine on a case-by-case basis the need for, type and scope of insurance required for the various operations conducted on State lands. In no way is the Commission exceeding its statutory authority in this regard.

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Article 2, Section 2000(e):

Exxon states that current Section 2000(e) of Article 2 provides adequate alternatives for applicants to meet liability and/or bond requirements but that proposed Section 1907 is more restrictive and should be revised to permit alternative methods of satisfying liability requirements.

As set forth in Section 2000(a), the provisions of Article 2 apply only to surface-use leases and permits and not to other types of leasing/permitting activities of the Commission. It was our attempt in proposing Section 1907 in Article 1 to have a general statement that applicants for any type of lease or permit from the Commission may be required to obtain liability insurance to protect the State from possible loss. Section 1907 is a broad statement that allows discretion in its use and in the method an applicant may choose to meet the requirements. For instance, many Commission lessees choose to "self-insure". It is intended to allow Commission lessees broad alternatives in meeting insurance and bond requirements (see proposed Section 1906).

Article 1, Section 1909 (a)(2): Exxon states that this section is unclear and should be clarified. It argues that current Section 1908 (bidding procedures) is

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limited to when the law or other regulations require that an award be made to the highest bidder. We agree. We also agree that it was our purpose to combine situations encompassed by existing Section 1908 with other types of activities that might require a low bid.

The process used by the Commission in advertising a notice of intent to receive bids and of course, the bid package, contain the express terms of the offering. We do not feel that it is necessary to list all of the items that would be included in the notice nor in the bid package; however, we felt that a listing of the general items would suffice. To date, we have not experienced a problem with bidders knowing whether to submit a high or low bid on a noticed offering.

Article 1, Section 1909(c): Exxon requests that the word "reasonable" be added between the words "all" and expenses. We agree to the change. The designation should be "1909 b". Exxon suggests that Section 1909(c) should be revised to reflect the provisions of P.R.C. 6218. P.R.C. Section 6218 reads:

> "The Commission may charge and collect reasonable fees for services performed by it, not exceeding the actual cost to the State of such services. In any case where the Commission, either pursuant

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to law or rule of the Commission, requires the publication of advertisements for bids or the publication of any notice in connection with the sale or leasing of State lands, the Commission may, by rule, require that the cost of such publication be advanced by any applicant or bidder and be paid by the successful applicant or bidder."

We feel that proposed Section 1909(c) (now changed to "(b)") is expressly interpretive of PRC 6218 and many other sections of the code that allow the Commission to charge fees and recover expenses for services rendered. To merely repeat Section 6218 of the PRC would be violative of the spirit and intent of current rule-making procedures.

Article 2, Section 2002(a): Exxon states that "pipelines" are included within both "Industrial" and "Right of Way" lease category and that the section should be clarified to indicate what pipelines are encompassed by each use category. Proposed Section 2000(b) allows the Commission to have broad discretion in determining which category of leases applicants may fall within. Inasmuch as it is virtually impossible to list the types of different uses of State lands that may include pipelines, it was necessary to give the Commission broad authority. Generally, if a pipeline is part of a greater or more intense use of a State parcel such as a marine terminal, it would be included

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in the "Industrial" lease category. If the State property were only used for a pipeline crossing, it would fall within the right of way category. In any event, the rental distinction between the two categories is minimal -- See 2003(a)(2) and 2003(a)(3).

The change in language from current Section 2000(a)(1)(B) was done for the purpose of utilizing more commonly used language. The Use of "Art" words and jargon is one of principal purposes for rewriting the regulations. We do not feel that a change in this instance is necessary.

Article 2, Section 2003: Exxon argues that changes in rental rates during the AB 1111 review is not appropriate nor did the Statement of Reasons fairly apprise the public of such change. We disagree. The Commission's Plan for review approved by OAL contemplated changes to the regulation concurrently with the AB 1111 review. The Commission notice of the proposed changes clearly states that all the regulations regarding surface use (Articles 1, 2, 2.1, 2.5, 5, 6 & 9) were either being repealed outright or repealed with adoption of a new replacement article. The Statement of Reasons clearly sets forth why the staff was proposing the changes and the studies and other data relied upon in support of the proposed changes.

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Exxon was notified of the proposed changes early in April of 1981 and still could not meet the final filing date for receipt of written comments (May 29, 1981). We believe, as evidenced by the six public hearings held on this matter, that the public had more than adequate opportunity to participate in this process.

Article 2, Section 2004: Exxon believes that the proposed changes contain restrictions not now contained in Section 2003. It says further that the Commission has provided no reason why the current standard (Section 2003) is no longer adequate or appropriate.

The maximum term of leases and permits issued by the Commission has not changed in proposed Section 2004 from current 2003. The Commission has merely added to its regulations a statement of its current leasing practices. The California Court of Appeal in 105 Cal. App. 3d at p. 556, 557 found that in exercise of the jus privitum (the normal right to sell or lease something owned) the State may negotiate and contract as does any other person. The Commission is merely exercising its prerogative in this regard.

In preparation for the proposed regulation changes, the staff conducted research and surveys of other large land administering entities and concluded that prudent land management practices dictate that leases be let for

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no longer time than is necessary to accomplish the intended use including the lessee's ability to amortize its investment in the property. This practice is common to all types of land leasing situations, not just those of the State Lands Comission.

In light of today's financial market, where financing is often limited to 5 or 10 years, it is especially important that the total lease/development project be examined. In addition, future public needs for these lands may be paramount to current uses.

It appears altogether fitting that private uses of public-owned lands be limited in duration to the least amount of time commensurate with the intended use.

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