

MINUTE ITEM

This Calendar Item No. C9  
approved as Minute Item  
9 by the State Lands  
Commission by a vote of 3  
to 0 at its 9/28/83  
meeting.

CALENDAR ITEM

C O 9 . 4

9/28/83  
W 40385  
Gonzalez

DENIAL WITHOUT PREJUDICE OF  
AN APPLICATION TO PROSPECT FOR MINERALS  
OTHER THAN OIL AND GAS AND GEOTHERMAL RESOURCES,  
RIVERSIDE COUNTY

APPLICANTS:

Merrill J. Keister  
4263 Chamoune Avenue  
San Diego, California 92115  
and  
Clifford Brandvig  
11226 Del. Reo Road  
Spring Valley, California 92077

AREA, TYPE LAND AND LOCATION:

Approximately 160 acres of State school  
land - N $\frac{1}{2}$  of N $\frac{1}{2}$ , Section 16, T6S R13E,  
SBM, Riverside County, 34 miles east of  
Indio, one mile south of Interstate Highway  
10 in the vicinity of the Hayfield Pumping  
Station and Hayfield Dry Lake.

BACKGROUND:

On June 17, 1983, staff received a partially  
complete application from Keister and Brandvig  
for a prospecting permit for the subject  
land parcel which was previously under  
permit to Baby Comstock, Inc. The prior  
permit had expired on May 31, 1983.

After initiating processing of the Keister  
and Brandvig application, Staff learned  
that on July 18, 1983, Baby Comstock, Inc.  
filed a claim with the State Board of Control

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for damages of over ten million dollars through alleged misrepresentation by the State Lands Commission. The alleged misrepresentation involves matters conducted under Baby Comstock's expired prospecting permit on the subject land.

Staff counsel and the office of the Attorney General have advised against further processing of an application for a prospecting permit on this particular school land parcel and further recommended denial of the application of Keister and Brandvig pending resolution of the claims and threats of litigation by Baby Comstock, Inc.

AB 884: N/A, application is incomplete.

OTHER PERTINENT INFORMATION:  
CEQA does not apply to projects denied by the Lead Agency. (PRC 21080(b)(5). Additionally, projects that are denied require no evaluation as to consistency with identified environmental values pursuant to P.R.C. 6370 et seq.

EXHIBIT: A. Tort Claim, Board of Control.

IT IS RECOMMENDED THAT THE COMMISSION:

1. DETERMINE THAT PROJECT DENIAL REQUIRES NO ENVIRONMENTAL ANALYSIS PURSUANT TO P.R.C. 6370 ET SEQ. AND P.R.C. 21000 ET SEQ.
2. DENY WITHOUT PREJUDICE THE APPLICATION OF MERRILL J. KEISTER AND CLIFFORD BRANDVIG FOR A PERMIT TO PROSPECT FOR ALL MINERALS, OTHER THAN OIL, GAS AND GEOTHERMAL RESOURCES ON THE N $\frac{1}{2}$  OF N $\frac{1}{2}$ , SECTION 16, T6S R13E, SBM, RIVERSIDE COUNTY, CONTAINING APPROXIMATELY 160 ACRES, ON THE BASIS THAT ANY PROSPECTING ACTIVITY ON THIS PARCEL MAY BE PREJUDICIAL TO THE STATE'S DEFENSE AGAINST CLAIMS AND LAWSUITS BY A PRIOR PERMITTEE OF THIS SCHOOL LAND PARCEL.
3. DETERMINE THAT UPON RESOLUTION OF THE CLAIMS AND LAWSUITS MERRILL J. KEISTER AND CLIFFORD BRANDVIG WILL BE GIVEN PRIORITY IN APPLYING FOR A PROSPECTING PERMIT ON THIS SCHOOL LAND PARCEL SUBJECT TO ANY COURT DECISION TO THE CONTRARY OR TO ANY SETTLEMENT BETWEEN THE PARTIES.

TORT CLAIM

EXHIBIT A

JUL 18 1983

BC 1-2 (10-81)

## INSTRUCTIONS

- A. CLAIMS RELATIVE TO CAUSES OF ACTION FOR DEATH OF PERSONAL PROPERTY OR GROWING CROPS MUST BE PRESENTED NOT LATER THAN THE 100TH DAY AFTER THE ACCRUAL OF THE CAUSE OF ACTION. CLAIMS RELATING TO ANY OTHER CAUSE OF ACTION MUST BE PRESENTED NOT LATER THAN ONE YEAR AFTER THE ACCRUAL OF THE CAUSE OF ACTION. (SEC. 911.2, GOV. CODE)
- B. CLAIMS MUST BE FILED WITH THE STATE BOARD OF CONTROL AT ITS OFFICE IN SUITE 300, 926 J STREET, SACRAMENTO, CALIFORNIA 95814.
- C. CLAIM TO BE FILED IN TRIPPLICATE.

BEFORE THE STATE BOARD OF CONTROL OF  
THE STATE OF CALIFORNIA

IN THE MATTER OF THE CLAIM OF

BABY COMSTOCK, INC.,

LARRY BOERNER,

AGAINST THE STATE OF CALIFORNIA

~~THE UNDERSIGNED CLAIMANT HEREBY MAKES CLAIM AGAINST THE STATE OF CALIFORNIA IN THE SUM OF~~

\$10,300,000.00

AND IN SUPPORT OF SAID CLAIM REPRESENTS AS FOLLOWS:

SEND NOTICES TO: (ATTORNEY)	GOVT. CODE SEC. 910.2 PROVIDES: "THE CLAIM SHALL BE SIGNED BY THE CLAIMANT OR BY SOME PERSON ON HIS BEHALF."
GEORGE HENDERSON	CLAIMANT'S SIGNATURE <i>Larry Boerner</i> (for Boerner)
173 Center Street	ADDRESS 828 S. ...
Auburn, CA 95603	ELI ... 92020
TELEPHONE NUMBER (916) 823-0363	TELEPHONE NUMBER 281 1171
1. WHEN DID THE DAMAGE OR INJURY OCCUR (GIVE EXACT DATE AND HOUR)	2. WHERE DID THE DAMAGE OR INJURY OCCUR (INCLUDE CITY AND COUNTY)
4/28/1983	Sacramento and Riverside, CA
3. HOW DID THE DAMAGE OR INJURY OCCUR (GIVE FULL DETAILS)	

Claimant was misrepresented to by the State Lands Commission as to the requirements for obtaining a preferential Mineral Extraction Lease. As a result of such misrepresentations, his application was denied by the Commission on 4/28/1983. The standard utilized by the Commission in denying claimant's application differed from that originally conveyed to claimant.

AT PARTICULAR ACT OR OMISSION ON THE PART OF STATE OFFICERS, SERVANTS OR EMPLOYEES CAUSED THE INJURY OR DAMAGE

The Commission published a definition of the requisites for obtaining a lease which defined the required mineralization as commercially valuable deposits of minerals. They later changed the definition to that of commercially valuable ore body.

RESERVE FOR FILING STATE CLAIM NUMBER	25275
PRESENTED STATE BOARD OF CONTROL 7/20/83	

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5. WHAT ARE THE NAMES OF THE STATE OFFICERS, SERGANTS OR EMPLOYEES CAUSING THE DAMAGE OR INJURY

A. F. Gonzalez  
 Al Willard  
 James Hart  
 Jim Fry  
 Clara Dedrick  
 Leo McCarthy  
 Ken Cory

6. WHAT DAMAGE OR INJURIES DO YOU CLAIM RESULTED (GIVE FULL EXTENT OF INJURIES OR DAMAGES CLAIMED)

Claimant lost the following:

1. Invested capital and labor \$300,000.00
2. Lost profits \$10,000,000.00

3. Claimant reserves the right to increase this claim accordingly

7. HOW WAS THE AMOUNT CLAIMED ABOVE COMPUTED (INCLUDE THE ESTIMATED AMOUNT OF ANY PROSPECTIVE INJURY OR DAMAGE) proof c

~~Lost profits from aborted sale of property to a third party~~ elopes

Capital and Labor - actual investment and expenditures

NAMES AND ADDRESSES OF WITNESSES, DOCTORS AND HOSPITALS

- Larry Boerner, President  
 Baby Comstock, Inc.  
 828 Sharon Way,  
 El Cajon, CA 92020

Robert Gross, Treasurer  
 Baby Comstock, Inc.  
 4440 Rosebud Ln #B  
 La Mesa, CA 92041

Doug Dienemañ, Vice Pres.  
 Baby Comstock, Inc.  
 1947 Jasmine,  
 El Cajon, CA 92021

Louis Cook, Sec.  
 Baby Comstock, Inc.  
 7541 San Miguel,  
 Lemon Grove, CA 92045

(see attached)

EXPENDITURES MADE ON ACCOUNT OF ACCIDENT OR INJURY

DATE	ITEM	AMOUNT
		\$

NOTICE

AFTER A CLAIM HAS BEEN FILED WITH THE BOARD IT WILL BE ASSIGNED A HEARING DATE, AND YOU WILL BE ADVISED OF THE TIME AND PLACE OF HEARING. AT PRESENT THE BOARD OF CONTROL MEETS ONLY IN SACRAMENTO AND LOS ANGELES. IF YOU WISH TO DESIGNATE ONE OF THESE LOCATIONS, PLEASE ADVISE US OF YOUR PREFERENCE WHEN YOU SUBMIT YOUR CLAIM.

SECTION 77 OF THE PENAL CODE PROVIDES:

"EVERY PERSON WHO, WITH INTENT TO DECEIVE, PRESENTS FOR ALLOWANCE OR FOR PAYMENT TO ANY STATE BOARD OR OFFICER, OR TO ANY COUNTY, TOWN, CITY, DISTRICT, WARD OR VILLAGE BOARD OR OFFICER, AUTHORIZED TO ALLOW OR PAY THE SAME IF GENUINE, ANY FALSE OR FRAUDULENT CLAIM, BILL, ACCOUNT, VOUCHER, OR WRITING, IS GUILTY OF A FELONY."

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OF CALIFORNIA  
THE BOARD OF CONTROL  
"J" STREET, SUITE 316  
SACRAMENTO, CALIFORNIA 95814  
(916) 323-3564 ATSS 473-3564

July 27, 1983

George Henderson  
173 Center St.  
Auburn, CA 95603

Re: Claim of BABY COMS.OCK, INC.  
LARRY BOERNER  
vs. State of California - No. G25275

The above-entitled proposed claim was presented to the State Board of Control on July 20, 1983

Unless you are notified that the proposed claim is not proper in form or does not comply with California Government Code Section 910 et seq., it will be acted upon at the meeting of August 23, 1983, in Room 1194, 455 Golden Gate Avenue, San Francisco, California. Your claim has been tentatively scheduled for 10:00 am.

It is necessary that you advise us in advance, NOT LATER THAN TEN (10) DAYS PRIOR TO THE MEETING DATE, whether you will appear at the hearing or whether you desire action without a personal appearance. Please complete and return one copy of this letter. Every effort will be made to hear your claim as promptly as possible. However, the hearing is conducted as a continuous process and you should be prepared to wait until your claim is called. BECAUSE OF TIME LIMITATIONS, CLAIMANTS WHO APPEAR AT THE HEARING WITHOUT RETURNING A COPY OF THIS NOTIFICATION TEN (10) DAYS IN ADVANCE WILL HAVE THEIR CLAIMS CONTINUED TO A LATER DATE.

Thank you for your cooperation.

JEANETTE K. RAPP  
Assistant Executive Secretary  
mn

cc: D-8 ATTORNEY GENERAL'S OFFICE RECOMMENDATION DUE A.S.A.P.

Claim Code 01

I (We) will appear before the Board on August 23, 1983

Please take action without a personal appearance.

\_\_\_\_\_  
Claimant's Signature

\_\_\_\_\_  
Attorney's Signature

Phone Numbers: Home ( ) - \_\_\_\_\_

Work ( ) - \_\_\_\_\_

KEEP ONE COPY OF THIS LETTER FOR YOUR RECORDS.  
CHECK ONE BOX AND RETURN A COPY TO BOARD OF CONTROL.

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Clyde Broshears, Director  
Baby Comstock, Inc.  
905 E. 4th #2  
National City, CA 92050

John Ross, Director  
Baby Comstock, Inc.  
876 Hawaii Avenue  
San Diego, CA 92154

Robert McKee, Director  
Baby Comstock, Inc  
9281 Carthay Circle  
Spring Valley, CA 92077

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