MINUTE ITEM
This Calendar Item No. 42
was approved as Minute Item
No. 42 by the State Lands
Commission by a vote of 3
to 0 at its 2/6/89
meeting.

CALENDAR ITEM

A)
)Statewide
S)

42

02/06/89
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Chatfield

MEMORANDUM OF UNDERSTANDING

APPLICANT: State Lands Commission
1807 - 13th Street
Sacramento, California 95814

AB 884: N/A

OTHER PERTINENT INFORMATION:

1. The State's indemnity selections are ultimately limited both by the acres of the entitlement and by its value. State Lands Commission (SLC) has in recent years made indemnity selections under the "pooling" concept defined in a 1981 Memorandum of Understanding with Bureau of Land Management (BLM). This concept allows SLC selections using rough value equivalence as sufficient basis, without the necessity to make up acreage equivalence <u>with each transaction</u>, SLC has recently made several selections of geothermal lands under this concept, using only a few acres of one relatively high-valued parcel of base, and has built up a "debt" of 4,181.25 acres of base still owed to BLM (the equivalent acreage requirement).

2. The United State Solicitor's office in Washington has advised BLM that the statute of limitations (6 years) on a large (1,435.67 acres) portion of this "debt" will expire on March 15, 1989. To protect federal rights in this matter, the Solicitor

is preparing to file a legal action before that date, if SLC has not surrendered the equivalent base acres. However, to surrender such an entitlement without using it in a selection of additional BLM land (to make up the value equivalence required by the pooling concept) represents an inefficient use of the State's entitlement and a loss of potential selectable BLM land.

3. The staffs of both BLM and SLC have determined that this potential loss or lawsuit could be avoided by execution of a Memorandum of Understanding with BLM. Such an agreement would permit SLC three years to use up the "debt" acreage in indemnity selections, with the proviso that any unused acreage at the end of that time will be declared used by BLM. Thereafter, there will be the opportunity for appeal to the Interior Board of Land Appeals. The current backlog of Board appeals is about 18 months.

4. This agreement in draft form has been reviewed by the United State Solicitor's office and provides sufficient protection for federal rights. It likewise provides sufficient opportunity for SLC to get the most benefit possible from the State's entitlement: selection of high-valued BLM acres, using up the "debt" with the low-value base needed to equalize values.

5. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Code Regs. 15061), the staff has determined that this activity is exempt from the requirements of the CEQA because the activity is not a "project" as defined by CEQA and the State CEQA Guidelines.

   Authority: P.R.C. 21065 and 14 Cal. Code Regs. 15378.

EXHIBIT: A. Memorandum of Understanding

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. CODE REGS. 15061 BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY P.R.C. 21065 AND 14 CAL. CODE REGS. 15378.

2. AUTHORIZE EXECUTION OF A MEMORANDUM OF UNDERSTANDING BETWEEN THE STATE LANDS COMMISSION AND THE BUREAU OF LAND MANAGEMENT REGARDING EQUALIZING INDEMNITY BASE USED WITH PAST SELECTIONS IN THE FORM IN EXHIBIT "A" ATTACHED AND BY REFERENCE MADE A PART HEREOF.

EXHIBIT "A"

MEMORANDUM OF UNDERSTANDING

BETWEEN

CALIFORNIA STATE LANDS COMMISSION

AND

BUREAU OF LAND MANAGEMENT, CALIFORNIA

PURPOSE

The California State Lands Commission (SLC) and the Bureau of Land Management, California (BLM) agree that by use of the pooling concept in processing indemnity selections since 1981, the SLC has received 4,181.25 acres more than they have identified as base acreage.

Both the SLC and the BLM hereby commit to identifying the 4,181.25 base acres and eliminating this imbalance as quickly as possible while still allowing the SLC to receive maximum dollar value for indemnity base. It is the intent of this memorandum of Understanding (MOU) to establish the procedures and timeframes whereby the 4,181.25 acre imbalance will be satisfied.

AUTHORITY

A. The authority of the BLM to enter into this MOU is set forth in Section 307 of the Federal Land Policy and Management Act of 1976, 43, U.S.C 1737.

B. The authority of the SLC to enter into this MOU is California Public Resources Code Section 6106.

C. The authority permitting indemnity selections is contained in Sections 2275 and 2276 of the Revised Statutes, as amended, 43 U.S.C. 851, 852.

PROCEDURES

A. State Land Commission

The SLC shall identify, by legal description, the additional 4,181.25 acres of indemnity base lands either as a separate transaction or in conjunction with ongoing state indemnity selections within 3 years from the effective date of this MOU, or shall propose alternative solutions, including the reversal of previous transactions, which will resolve the situation to BLM's satisfaction.

B. Bureau of Land Management, California

In the event the entire 4,181.25 acres have not been identified by the SLC within the timeframes agreed to, the BLM shall after consultation with SLC:

a. Identify the balance of the 4,181.25 acres from the remaining unused state indemnity base inventory sufficient to satisy the imbalance;

b. Use the lowest valued lands on the inventory listing for purposes of satisfying the imbalance;

c. Use the most recent appraisals as of that time for purposes of making the determination of the lowest value land possible; and

d. Advise the SLC of such base lands identification by formal decision, with the opportunity for appeal to the Interior Board of Land Appeals.

Provided, however, that nothing herein shall be construed as a waiver by the SLC or the BLM of the right to challenge the intrepretation of any law or policy upon which the above referenced transactions were premised. The SLC, by entering into this agreement, waives the 6 year statute of limitations as it may apply to these transactions, and agrees to make a good faith effort to resolve the problem identified by the BLM.

IMPLEMENTATION

This MOU will become effective upon the date of the last signature below.

State Lands Commission	Bureau of Land Management
Date	Date

0145H