MINUTE ITEM
This Calendar Item No. C37
was approved as Minute Item
No. 37 by the State Lands
Commission by a vote of 3
to Ø at its 8/3/94
meeting. 57, 58

CALENDAR ITEM

C37

S 29

08/03/94
W 17000.1
R. Ludlow
Hager

CONSIDER AGREEMENT REGARDING PRIORITY OF PAYMENTS UNDER SECTION 2.12 OF THE OPTIMIZED WATERFLOOD PROGRAM FOR THE LONG BEACH UNIT

PARTIES

State Lands Commission
City of Long Beach
ARCO Long Beach, Inc.
Atlantic Richfield Company

BACKGROUND

On November 5, 1991 ARCO Long Beach Inc ("ALBI"), a wholly owned subsidiary of Atlantic Richfield Company, entered into an agreement with the City of Long Beach and the State of California, acting by and through the State Lands Commission, for the implementation of an Optimized Waterflood Program for the Long Beach Unit (the "OWPA"). The purpose of the OWPA is to increase the production and profitability of the Long Beach Unit above the level which could be achieved without implementation of such a program. Under the terms of the OWPA, ALBI is obligated to make a significant investment in the the Long Beach Unit which it recoups from payments made to ALBI by the City from revenues attributable to the successful implementation of the program. Any payments which are to be made to ALBI are governed by the provisions of section 2.12 of the OWPA.

In late 1993 the price of oil dropped precipitously. The resulting low prices ultimately led to a dispute between the City and ALBI concerning the priority that payments to be made to ALBI pursuant to Section 2.12 of the OWPA bore to certain other payments or retentions made by the City as trustee for the Long Beach tidelands. This dispute became so serious that it threatened the continued existence of the OWPA.

THE PROPOSED SECTION 2.12 AGREEMENT

The proposed agreement requires that all payments due ALBI under Section 2.12 of the OWPA be made from Adjusted Oil Revenue Attributable to Tract 1 of the Long Beach Unit and from revenues of the State derived from Tract 2. The definition of Adjusted Oil Revenue Attributable to Tract 1 attempts to insulate payments due ALBI under Section 2.12 from payments and expenses of the

City that relate primarily to oil and gas operations in areas of the Long Beach tidelands not covered by the OWPA.

Provisions are made to provide the City with funds to meet its expenses under the Contractors' Agreement and OWPA plus specific provisions dealing with Subsidence Costs. In addition, certain costs pertaining to the Long Beach tidelands for services provided by the Attorney General to the State Lands Commission, are also provided for.

AB 884:

N/A

OTHER PERTINENT INFORMATION

1. The proposed Section 2.12 Agreement was approved by the City of Long Beach at its City Council meeting on August 2, 1994.

2. The staff of the State Lands Commission and the Office of the Attorney General believe that the proposed Section 2.12 Agreement is in the best interest of the State and recommend it to the Commission.

EXHIBIT:

A. Proposed Section 2.12 Agreement

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. SECTION 21065 AND 14 CAL. CODE REGS 15378.

2. APPROVE EXECUTION BY THE EXECUTIVE OFFICER OF THE SECTION 2.12 AGREEMENT IN SUBSTANTIALLY THE FORM ATTACHED HERETO AS EXHIBIT "A".

EXHIBIT A

AGREEMENT REGARDING PRIORITY OF PAYMENTS UNDER SECTION 2.12 OF THE OWPA

This AGREEMENT REGARDING PRIORITY OF PAYMENTS UNDER SECTION 2.12 OF THE OWPA (this "Agreement") is made and entered into by and among the State of California (the "State"), by and through the State Lands Commission (the "SLC"), the City of Long Beach (the "City"), Atlantic Richfield Company, a Delaware corporation ("ARCO"), and ARCO Long Beach, Inc., a Delaware corporation and a wholly-owned subsidiary of ARCO ("ALBI"). ARCO and ALBI are collectively referred to as the "ARCO Parties". The State, by and through the SLC, the City and the ARCO Parties are collectively referred to herein as the "Parties", and each such entity individually is referred to herein as a "Party".

WHEREAS, the Parties have heretofore entered into that certain Agreement for Implementation of an Optimized Waterflood Program for the Long Beach Unit (the "OWPA"), entered into effective as of November 5, 1991, and reference to the OWPA is made herein for all purposes; and

WHEREAS, an issue has arisen concerning the priority that payments to be made to ALBI pursuant to Section 2.12 of the OWPA should have in relation to certain other payments or retentions made by the City as trustee for the Long Beach tidelands; and

WHEREAS, the Parties now desire to set forth the priority of payments to be made by the City to ALBI pursuant to Section 2.12 of the OWPA in relation to the other payments or retentions made by the City as trustee for the Long Beach tidelands.

NOW, THEREFORE, in consideration of the mutual promises set forth in the OWPA and in consideration of the mutual promises set forth herein, it is agreed that payments by the City pursuant to Section 2.12 of the OWPA shall be in accordance with the following provisions:

1. Payments to ALBI by the City on behalf of the State shall be made from Adjusted Oil Revenue Attributable to Tract 1, as that term is defined herein, and from revenues of the State derived from production from Tract No. 2.

2. Adjusted Oil Revenue Attributable to Tract 1 shall be those funds constituting the net proceeds (as such term is used in §1(b) of Chapter 138, Statutes of 1964, First Extraordinary Session ("Chapter 138")) computed from the revenues and costs derived from or allocated or assigned to Tract 1 after subtracting the City's costs, to the extent not deducted in determining Oil Revenue (as defined in §1(b) of Chapter 138), in administering oil

and gas operations that are directly attributable to Tract 1. Such costs shall be limited to the following:

A. Costs of making adjustments required by Article 9(e) of the Contractors' Agreement.

B. Costs actually incurred by the City in administering the provisions of the OWPA and in administering the provisions of the Contractors' Agreement other than as set forth in subparagraph A above.

C. Outside counsel attorneys' fees and overhead and costs for inside attorneys who are employees of the City, court costs, expert witness fees, litigation costs or costs of other proceedings, arbitrators' fees and fees of retired judges from a private arbitration/mediation service incurred by the City (1) to enforce rights and obligations or defend claims arising under the Contractors' Agreement or the OWPA, or (2) in the following actions: City of Long Beach and State of California v. Exxon Corporation which is presently on appeal to the Ninth Circuit and is commonly known as "Long Beach I", People of

the State of California, et al v. Chevron Corporation, et al which presently is on appeal to the California Court of Appeal for the Second Appellate District and is commonly known as the "The Pipeline Case," and People of the State of California, et al v. Chevron Corporation, et al which presently is before the Los Angeles County Superior Court and is commonly known as "Long Beach II". The Parties agree that the three actions listed in subpart (2) hereinabove are not to be used by way of example for purposes of defining subpart (1) hereinabove.

D. Costs for charges made to the SLC for services already provided to it by the Office of the Attorney General that constitute part of the expenditures determined by the Director of Finance in administering Chapter 138 and Chapter 29, Statutes of 1956, First Extraordinary Session, insofar as such charges pertain to the Long Beach tidelands, but only to the extent that such costs for charges have not otherwise been funded by the SLC.

3. Should there be insufficient Oil Revenue to pay Subsidence Costs (as defined in §1(e) of Chapter 138) or costs of repressuring operations not deducted in determining Oil Revenue after the payments due to ALBI under Section 2.12 of the OWPA are subtracted from Adjusted Oil Revenue Attributable to Tract 1 and from revenues of the State derived from production from Tract No. 2, the City first shall satisfy the unpaid Subsidence Costs or costs of repressuring operations by drawing upon the Reserve for Subsidence Contingencies ("Reserve") established by §4(f) of Chapter 138 and Article 7 of the Contractors' Agreement. Should this Reserve be exhausted, the City may satisfy any further unpaid Subsidence Costs or costs of repressuring operations by deducting them in computing Adjusted Oil Revenue Attributable to Tract 1.

4. Except as provided in paragraphs 2 and 3 above or as the Parties may subsequently agree in writing, no other amounts may be deducted from the net proceeds of Tract 1 (as defined in paragraph 2 above) in computing Adjusted Oil Revenue Attributable to Tract 1. For purposes of example only, the following costs, money or payments are among those that shall not be deducted in computing Adjusted Oil Revenue Attributable to Tract 1:

A. Costs, expenses or liabilities incurred, directly or indirectly, in connection with the Lomita Gas Plant.

B. Costs, expenses or liabilities incurred, directly or indirectly, in connection with abandonment, well plugging, facility removal, reclamation and surface and/or subsurface restoration on any portion of the Long Beach tidelands.

C. Costs of land rentals charged by or paid to the Board of Harbor Commissioners of the City of Long Beach.

D. Costs of production taxes, ad valorem taxes or any other taxes attributable to any portion of the Long Beach tidelands.

E. Operating costs incurred, directly or indirectly, in connection with operations on any portion of the Long Beach tidelands.

Nothing in this paragraph 4 shall affect the obligation of the ARCO Parties, as Unit

Participants in the Long Beach Unit, to be responsible for their proportionate share of the costs, expenses or liabilities listed in subparagraphs A through E above to the extent covered by the Unit Operating Agreement.

5. Until all amounts due to ALBI under Section 2.12 of the OWPA have been paid, no part of Adjusted Oil Revenue Attributable to Tract 1 shall be used for any other purpose. The State shall remain liable to ALBI for the unpaid portion of any and all payments to be made under the OWPA if for any reason such are not paid by the City when due.

This Agreement shall not be binding on any Party unless and until executed by all the Parties. This Agreement shall become effective when executed on behalf of all the Parties.

Capitalized terms used herein which are not listed herein as being defined in Chapter 138 or which are not otherwise defined herein shall have the same meaning ascribed to such terms in the OWPA if used therein.

This Agreement may be modified only by a written instrument duly executed by each Party affected by any such modification.

This Agreement shall be governed by and construed in accordance with the laws of the State of California without giving effect to conflicts-of-laws rules and laws.

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors, legal representatives and assigns.

This Agreement is made, at least in part, in compromise of disputed claims. In the event that this Agreement does not become effective, neither this Agreement nor the discussions and negotiations between the Parties pertinent to the drafting of this Agreement shall be admissible in any action or other proceeding that may be commenced concerning the priority of the payments to be made by the City to ALBI pursuant to Section 2.12 of the OWPA in relation to certain other payments or retentions made by the City as trustee for the Long Beach tidelands.

This Agreement may be executed in identical counterparts. Once an identical counterpart hereof is executed on behalf of each Party, such counterparts shall be deemed to have the same force and effect as if the Parties had executed the same original copy hereof.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed on the date reflected next to the signature for each Party.

The State of California

BY: State Lands Commission

BY: _____ _____
Robert C. Hight
Executive Officer
Date of Execution

The City of Long Beach

BY: _____ _____
James C. Hankla
City Manager
Date of Execution

Atlantic Richfield Company

BY: _____ _____
William E. Wade
Executive Vice President
Date of Execution

ARCO Long Beach, Inc.

BY: _____ _____
James M. Davis
President
Date of Execution

The foregoing AGREEMENT REGARDING PRIORITY OF PAYMENTS UNDER §2.12 OF THE OWPA is hereby approved as to form this _____ day of _____, 1994.

BY: John R. Calhoun,
City Attorney

BY: _____
Deputy

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