MINUTE ITEM
This Calendar Item No. 68 was approved as Minute Item No. 68 by the California State Lands Commission by a vote of 2 to 1 at its 8-17-04 meeting.

MINUTE ITEM
68

08/17/04
P. Thayer

CALIFORNIA PERFORMANCE REVIEW

Regular Calendar Item 68: Commission listened to a staff proposal on adopting a resolution not supporting the California Performance Review's report suggesting abolishing the State Lands Commission. The Commission approved the resolution by a 2-1 vote.

CALENDAR ITEM
68

A)
)Statewide
S)

08/17/04

P. Thayer

RESOLUTION OPPOSING THE ABOLITION OF THE STATE LANDS COMMISSION AS PROPOSED IN THE CALIFORNIA PERFORMANCE REVIEW REPORT

SUMMARY

The reorganization plan released by the California Performance Review (CPR) proposes operational enhancements and reorganization for California's State Government. Included in the later is a proposal to abolish the California State Lands Commission (Commission). The Commission's functions and staff would be primarily distributed to three new state departments.

This proposal would have adverse impacts on public, applicant and media access to decisions affecting the uses of public trust lands. The Commission's implementation of trust law is already efficient and cost effective. There is a high likelihood that the proposed reorganization of the Commission's functions would be less efficient and result in poor management of trust lands. The reorganization is especially ill advised in that it would revert management of trust lands to a system that previously failed, leading to the establishment of the Commission.

Some of the operational enhancements recommended by the report would benefit State government and the public and should be implemented by the Commission.

BACKGROUND

California Performance Review

The Governor established the CPR to "restructure, reorganize and reform state government to make it more responsive to the needs of its citizens and business community." Since February 2004, 275 temporarily assigned state employees have been gathering data for the CPR's report and recommendations.

The CPR's 2,500-page report was released on August 3, 2004. It focuses on four categories: 1) Executive Branch Reorganization, 2) Program Performance Assessment and Budgeting, 3) Improved Services and Productivity, and 4) Acquisition Reform. The first and third categories are the more significant for the Commission.

ANALYSIS

Role of the State Lands Commission

The State Lands Commission, composed of the Lieutenant Governor, the State Controller, and the Director of Finance, manages tide and submerged lands under state waters along the coast and under navigable inland waters, and school lands, which are dedicated to revenue production for educational purposes. The Commission applies the public trust doctrine to insure that these lands are used for water-related purposes including protection of the environment, public recreation, and economic benefit to the citizens of California. The Commission expects to generate $100 million in revenues to the state this fiscal year. The Commission manages close to 4,000 leases of public trust lands.

Adverse Impacts from Abolition of the Commission

The abolition of the Commission would not help the state meet the Plan's goals of greater efficiency and to make state government "more responsive to the needs of its citizens and business community." Specifically:

1) Public Access would be eliminated to decisions on Public Trust lands and other Commission matters. The tide and submerged lands and school lands administered by the Commission are lands held in trust for the public and are required to be used for statewide benefit. The Commission makes all of its decisions after public input at duly noticed, open public hearings. The Plan would move these decisions to state officials who would make them behind closed doors.

2) No Oversight of former Commission programs. The Commissioners, not bureaucrats, make the final decision on staff recommendations. The Commissioners are available to the public, applicants and others who believe the staff is not correctly applying the law or is delaying project processing. The Plan would eliminate this oversight.

3) No accountability to the public in administration of public's lands. Two of the three Commissioners are statewide elected officials – the Lieutenant Governor and the State Controller. These officials make their decisions on the Commission in light of the public scrutiny they receive and their accountability to the public in the next election. The Plan would place

decisions on public lands in several superagencies that are not likely to be as accessible or responsive to the public will.

4) Plan would return administration of Public Trust lands to a system that led to corruption. The State Lands Commission was established in 1938 after evidence was uncovered of corruption in the administration of leases for oil development on state lands (see attached article). Called into a special session to respond, the Legislature established the Commission to prevent future abuses. For the last 66 years, the Commission's management has fostered appropriate uses of Public Trust lands while earning over $7 billion in revenue for the State. The Plan would return to the former system of closed door, bureaucratic administration of Public Trust lands.

5) Plan would create inefficiencies in administration of public lands. The Plan splits administration of public trust lands between several agencies. All of these lands must be administered pursuant to the public trust doctrine, a complex legal doctrine. The Plan would require redundant development of public trust expertise in several agencies and lead to inconsistent policies and potentially allow activities that would be incompatible with one another.

6) Existing Commission is organizationally and fiscally efficient. The Commission brings together staff that has expertise on public trust policy, minerals management, management of 4,000 leases, and oversight of ports. Each of its existing functions is related to the others and benefits from having the same staff involved. All of the work now performed by Commission staff would still have to be performed under the Reorganization Plan. Splitting up divisions with related functions would require the hiring of duplicative staff to assure that the expertise now commonly available at the Commission would be available to the separated divisions and would reduce efficient coordination of related functions. The Commission's staff has already been consolidated, being reduced from 249 in 1990 to 203.5 in 2004. Of these remaining 203.5 positions, 101 are involved with new programs such as oil spill prevention and ballast water management – core staff has been reduced to 102.5 positions. Finally, as public officials, beyond their existing salary, the Commissioners do not receive any payment for participating in Commission meetings. Thus no additional monies would be saved by abolishing the Commission.

7) Reorganization Plan proposals are less efficient than present Commission. The Plan proposes to join the Commission's Oil Spill Prevention Program with the Department of Fish and Game's response program. These existing programs do not overlap and they benefit from their present organization locations. DFG's program plans for and responds to oil spills. The most important impact to consider in responding to spills is environmental. DFG's core expertise in the environment and biology fits well with this responsibility. In contrast, the Commission's program of spill prevention focuses on engineering and procedures. The Commission's engineering expertise, which also is applied to management of its oil leases and the Commission's day-to-day relationship with ports, makes the Commission the appropriate place for Oil Spill Prevention.

Similarly, the Commission's experience in negotiating, appraising and doing complex boundary line work on leases provides in-house expertise that is supportive of the Commission's management of its oil and gas leases. The Plan would send this function to the new Infrastructure Department, which otherwise does not have experience or expertise in revenue leases or oil and gas leases.

8) Reorganization Plan replays previously rejected reorganization proposals. In 1995, Governor Wilson proposed in a Reorganization Plan to break off State Lands Commission energy functions in a manner not unlike that proposed in this Plan. However, after hearings on Governor Wilson's plan before the Little Hoover Commission, the Governor deleted the State Lands Commission from the reorganization before resubmitting the rest of his plan regarding state management of energy issues. It is unfortunate that this year's CPR Plan is revisiting proposals previously reviewed and rejected.

Report's Recommendations for Operational Enhancements Should Be Considered by the Commission.

In addition to the Reorganization Plan, the CPR Report contains a number of recommendations to improve efficiency and public service. Among others, they include:

- Updating websites
- Enabling online application completion and submission
- Including customer service as part of strategic planning

- Booking airfares on line.
- Periodic review of vehicle needs and inventories
- Insuring maintenance of digital documents
- Improving statewide technology management
- Develop statewide program for training and career development

These and other recommendations are consistent with the direction the Commission has given staff and many of the improvements already made in Commission operations. Staff believes that additional improvements can be made – unilaterally in our functions and cooperatively with other State agencies.

RECOMMENDED ACTION

Staff recommends that the Commission adopt the attached Resolution. This resolution opposes the abolition of the Commission. It also directs staff to take the necessary actions to implement the operational enhancements recommended in the report that would improve efficiency, productivity and public service.

RESOLUTION BY THE CALIFORNIA STATE LANDS COMMISSION OPPOSING THE ABOLITION OF THE STATE LANDS COMMISSION AS PROPOSED BY THE CALIFORNIA PERFORMANCE REVIEW

WHEREAS, The California Legislature created the California State Lands Commission in 1938, composed of the Lieutenant Governor and State Controller, both statewide elected officials, and the Director of Finance, an appointee of the Governor, to manage and protect the state's school and sovereign lands (i.e. the beds of all naturally navigable rivers, lakes, and streams, as well as the state's tide and submerged lands along the state's more than 1,100 miles of coastline); and

WHEREAS, The 1930's discovery of corruption and fraudulent practices in management of the oil, gas and other mineral resources belonging to the state led the Legislature to establish the Commission as an independent entity with a membership of accountable, elected officials to prevent future abuse; and

WHEREAS, Since its inception, the Commission has fulfilled the mandate of its creation by managing thousands of revenue generating leases on public trust lands, generating in excess of $7 billion, while protecting the resources of the state; and

WHEREAS, In managing California's lands, the Commission applies the public trust doctrine, which ensures that these lands are used for water-oriented commerce, navigation, and fisheries, water-oriented recreation, and preservation of land in a natural state; and

WHEREAS, Implementation of the public trust doctrine requires careful balancing of competing uses to ensure that the public trust lands best meet the needs of the citizens of the state; and

WHEREAS, On the lands within its care, the Commission protects and restores environmental values, improves public access to waterways, fosters ports that are crucial to California's economy, prevents oil spills from oil leases and marine terminals, prevents the importation of exotic species in ballast water, and generates revenue for the state; and

WHEREAS, The Report of the California Performance Review (CPR), released on August 3, 2004, includes recommendations to improve performance of state agencies and a plan for wholesale reorganization of state government; and

WHEREAS, The reorganization proposed by the CPR would abolish the State Lands Commission and split the Commission's management functions among three new proposed departments - the Department of Environmental Protection, the Infrastructure Department and the Department of Natural Resources; and

WHEREAS, Abolition of the Commission would eliminate the present system of decision making by elected officials at public hearings, open to scrutiny and input from the public, applicants, and the press, providing appropriate checks and balances to

ensure that decisions concerning public trust lands responsive to the needs of California; and

WHEREAS, Abolition of the Commission would eliminate public accountability for decisions related to the administration of public lands now being made by the Lands Commission in open public meetings. Concentrating decisions concerning oil, gas and mineral resources management and the use of lands for public trust purposes in non-elected staff would reinstate the management system which existed prior to the creation of the Commission; and

WHEREAS, Abolition of the Commission and transfer of the Commission's management functions to three departments would create inefficiencies in administration requiring redundant development of public trust expertise in several agencies and would lead to inconsistent administration of the public trust doctrine, a complex legal doctrine; and

WHEREAS, Abolition of the Commission and the transfer of the Commission's management functions to three departments would dissolve the Commission's effective, interdisciplinary team of public lands managers, which includes specialists in mineral resource management, surface management, boundary determination, structural engineering, natural sciences, safety management, marine terminal operations and oil spill prevention, and would require hiring of duplicative staff to assure that the expertise now commonly available at the Commission's "one-stop shop" would be available to the three departments being proposed for creation by the CPR; and

WHEREAS, Parts of the reorganization plan proposed by the CPR was previously rejected in reorganization proposals including Assembly Bill No. 2468 (1993-94) and the draft Governor's Reorganization Plan No. 1 (1995-96) both of which would have broken up the functions of the State Lands Commission; now, therefore, be it

RESOLVED, That the California State Lands Commission opposes the recommendation in the Report of the California Performance Review to abolish the State Lands Commission and distribute its functions among several agencies, urges the California Performance Review Commission to delete this recommendation from their final report to be presented to the Governor, and recommends that the Governor not include this recommendation in subsequent reorganization plans and other proposals; and be it further

RESOLVED, By concentrating decision-making concerning oil, gas and mineral resources management in non-elected staff, as proposed by the CPR, this reorganization would severely reduce public accountability and scrutiny of resource management decisions involving lands owned in trust by the State; and be it further

RESOLVED, That the Commission directs staff to review the recommendations of the Report of the California Performance Review as they pertain to General Government and Statewide Operations and support and implement those that improve services and productivity and further the efficiencies of the California State Lands Commission and those of government in general; and be it further

RESOLVED, That the Commission directs its Executive Officer to transmit copies of this resolution to the Governor of California; to the Co-Chairs of the California Performance Review Commission; to the Secretary for Resources; to the Secretary for Environmental Protection; Secretary of the Business, Transportation and Housing Agency; to the President pro Tempore of the Senate; to the Speaker of the Assembly; to the Senate Minority Leader; to the Chair of Senate Committee on Budget; to the Chair of the Senate Committee on Natural Resources and Wildlife; to the Chair of the Senate Committee on Governmental Organization; to the Chair of the Senate Select Committee on Government Oversight; to the Assembly Minority Leader; to the Chair of the Assembly Committee on Budget; to the Chair of the Assembly Committee on Natural Resources; to the Chair of the Assembly Select Committee on California Ports; to the Chair of the Joint Committee on Boards, Commissions and Consumer Protection; and, to the Chair of the Joint Committee on Legislative Budget.

State Land Chief And Aid Quit to Bar Oil Charges

SAN FRANCISCO CHRONICLE
August 12, 1938

Stockburger Makes Deal to Let Pair Resign and Sidetrack Report of Secret Investigation

By HARRY LERNER
Chronicle Staff Writer

SACRAMENTO, Aug. 11—Two State officials quit their jobs today in a deal with A. E. Stockburger, State Director of Finance, which sidetracked accusations against them.

The resignations were placed in Stockburger's hands in Los Angeles by Carl B. Sturzenacker, Merriam appointed chief of the division of State lands, and his subordinate, Arthur H. Alexander, petroleum production inspector, stationed at Los Angeles.

Stockburger notified the State personnel board at Sacramento he had the resignations in his pocket just before the board offices closed this afternoon and while a special board investigator stood by waiting to file charges against the officers.

MADE SECRET REPORT

The investigator, Norris J. Burke, San Francisco attorney was engaged by the board six weeks ago for a secret probe into the administration of the immensely rich Southern California oil fields by Sturzenacker and Alexander.

When Investigator Burke was retained, the board's instructions to him were to submit a report or charges, depending on what he discovered in connection with the oil field inquiry.

Burke drew charges. He named both Sturzenacker and Alexander, and it was these charges that Stockburger's action caused to be withheld today.

He had cooled his heels for two days in Sacramento waiting for instructions on whether or not to file the charges which had been prepared in San Francisco last week.

During the two days that Burke waited, and for several days prior, rumors flew about the Capitol that Director Stockburger, was attempting to induce the officials to resign.

Sturzenacker, it was learned, was confronted by Stockburger and told that, unless he quit, the accusations would go on file. Then Alexander was contacted. He refused to quit, it was reported, and Sturzenacker, who had indicated his willingness to resign if Alexander followed suit, balked.

Stockburger, however, again saw Alexander—the meeting took place in Stockburger's Los Angeles office yesterday and this time won out. Alexander agreed to sign out. Then Sturzenacker went along.

DENIED PAIR QUIT

But as late as last night, at his hotel in Los Angeles, Stockburger told newsmen:

"I have no resignations from any one. There is nothing before me."

At that very moment Investigator Burke, who had been restrained yesterday from acting, pending the success or failure of Stockburger's appeal to Sturzenacker and Alexander, was waiting in Sacramento for advice on whether or not to proceed.

Late this afternoon that advice came.

Stockburger, driving north from Los Angeles, stopped off at a town to notify Louis Kroeger, personnel technician for the State Personnel Board here, that he had the resignations from Sturzenacker and Alexander.

Kroeger telephoned Fred R. Wood, board chairman, at San Francisco and then wrote a letter for press release.

The letter, over Wood's signaure, was addressed to fellow members of the board and reminded them that they had requested that no report be filed on the Sturzenacker-Alexander investigation prior to its formal submission to them.

REPORT DUE AUGUST 18

Wood asserted in the letter that he had "caused inquiries to be made" and learned that Stockburger already had Sturzenacker's resignation and "later the same day" obtain the resignation of Alexander.

The report of the investigator, Wood said, would therefore be filed with the board August 18.

"In doing so, I am not making any statement as to further disposition of this matter," he concluded.

Burke spent four weeks in Los Angeles, interviewing scores of witnesses at an office in the State building.

He directed his attention to matters that had long been discussed, speculatively, in connection with the administration of the Huntington Beach-Wilmington oil field areas, where the State owns oil worth untold millions of dollars.

Among the subjects known to have been investigated were those dealing with the granting of a permit to an oil company for 60 new wells in an area previously largely closed to exploitation.

TOLD WHO TO "SEE"

In addition, Burke probed reports that oil companies seeking permission to redrill wells were told to contact a Los Angeles politician before their applications could be acted upon.

Also Burke investigated the manner in which filings were made on 14 parcels of Long Beach-Wilmington tidelands by 14 persons, including the Los Angeles politician and the father-in-law of Alexander.

It was the disclosure of these filings last June in affidavits made by J. M. Midgely and Bert McAtee, former employes in the land office that led to Burke's investigation.

Stockburger had turned the affidavits over to the personnel board without recommendation and without comment. The board, on its own initiative, called in Burke and put him to work on not only this case but on all other matters relating to the oil field administration.

The filing of affidavits, without charges being made by the appointing power — Stockburger — confronted the board with a situation that had no parallel.

The board therefore had never conducted an investigation on its own motion, but since Stockburger had made neither recommendation nor charges, thus placing the decision on procedure in the board's lap, the unprecedented employment of a special investigator—Burke—was the board's only alternative.

$5000 A YEAR JOB

Stockburger as director of finance and chairman of the new State Lands Commission supervises all activities of the Division of State Lands.

Sturzenacker was appointed chief of the division of lands in 1934, a position paying $5000 a year. He received the job by appointment from Governor Merriam, after serving as Merriam's campaign aid in Los Angeles in the 1934 campaign.

Alexander received his job in 1932. His official rating is petroleum production engineer. In 1933 he was in charge of the Huntington Beach Lands Office, but is now left the Lands Office at Los Angeles.

Resigns

Carl B. Sturzenacker
Ex-State Lands Chief

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