MINUTE ITEM
This Calendar Item No. 55 was approved as Minute Item No. 55 by the California State Lands Commission by a vote of 3 to 0 at its 2-17-05 meeting.

Minute Item
55

02/17/05
W 26020
WP 4376
D. Plummer
D. Sanders

CALIFORNIA STATE LANDS COMMISSION
(PARTY)

Regular Item 55: A staff presentation was made to the Commission regarding the assignment of a lease to the Port of Stockton and construction of a new bridge. The item was approved as presented by a 3-0 vote.

CALENDAR ITEM
55

A 26

S 5

02/17/05
W 26020
D. Plummer
D. Sanders

CONSIDER THE DOCUMENTATION OF THE PREVIOUSLY IMPOSED CONDITION FOR THE LEASE FOR THE DAGGETT ROAD BRIDGE, SPECIFICALLY, THE WEST COMPLEX AIR EMISSIONS REDUCTION PROGRAM, PORT OF STOCKTON

PARTY:

California State Lands Commission

BACKGROUND:

At its December 9, 2004, meeting, the Commission heard the Port of Stockton's application for lease assignment and lease approval related to the proposed construction of a new bridge over Burns Cutoff that would serve the Port of Stockton's proposed West Complex expansion area. Prior to the December 9th meeting, staff had worked with the Port's staff in the development of a program to expedite the preparation and implementation of a Truck Travel Plan that will govern the movement of trucks to, within, and from the West Complex. Staff of the Commission and Port had also developed a pilot program to provide for the collection and transmittal of ballast water release information and to enhance coordination with the Commission's Marine Invasive Species Program. Staff recommended that the Commission approve an assignment of the existing lease for the old Daggett Road Bridge from the United States of America, Department of the Navy, to the Port of Stockton and authorize the issuance of a new lease to the Port of Stockton for the construction of a new bridge.

In addition to staff's testimony at the December 9th hearing, the Commission received testimony from the Port of Stockton and the Natural Resources Defense Council (NRDC). The NRDC advocated, among other things, that the Commission require the Port of Stockton to implement a truck replacement program modeled after the Gateway Cities Program, which operates, in part, through funding provided by the Ports of Los Angeles and Long Beach.

The Commission approved the lease assignment and the issuance of a new lease conditioned upon the establishment of a truck replacement program funded by a percentage of the Port's profits from the west complex, and directed staff to work with the Port to describe a program that: 1) is consistent with and equitable when compared to the programs of other ports and 2) has the flexibility to allow monies dedicated to the program to be spent on other air quality improvement measures that produced a greater benefit than truck replacement.

Staff contacted the Ports of Los Angeles, Long Beach and Oakland about their truck replacement programs. The Ports of Los Angeles and Long Beach participate in the Gateway Cities Clean Air Program (Gateway Program) through a contribution of funds. Funding from the Ports for this program is not based upon any specified percentage of revenues or profits, but is a fixed sum contribution. The Port of Los Angeles, as part of its settlement of litigation with the NRDC pertaining to the China Shipping Terminal, agreed to a contribution of $10 million to the Gateway Program, over a five-year period, to be used to replace or retrofit trucks serving the Port. The Port has also allocated an additional $17.12 million, over a four-year period, towards an expanded Gateway Program for truck modernization and diesel particulate filter installation on newer trucks. The Port of Long Beach has contributed $1 million to the Gateway Program, although none of the monies was allocated towards truck replacement, but rather to clean diesel fuel technology. The Port of Long Beach has not allocated any additional monies at this time. The Port of Oakland made a one-time allocation of $1.48 million towards a truck retrofit program in connection with two specific terminal projects and, to date, has not allocated any additional monies.

To convert the above allocations of monies to a percentage of revenue being contributed by each of the ports, in order to describe a program to satisfy the condition imposed by the Commission at its meeting of December 9, 2004, staff: 1) reviewed annual financial reports from each of the ports, including the Port of Stockton, and 2) selected, as a common denominator, what the Ports of Los Angeles, Long Beach and Oakland refer to as "Operating Income" and which the Port of Stockton refers to as "Net Operating Profit". Each respective term is the result of total revenues produced from maritime activities, less the operating expenses related to the maritime activities. Staff then calculated a percentage by spreading the contributions over a five-year period, once again in an effort to create program parity. The results are as follows:

Port of Long Beach

$ 1 million / $130,658,223 (2003 operating income) – **0.77%** (one year)
$ 200,000 (5 year spread) / $130,658,223 – **0.15%**

Port of Los Angeles

Non-litigation settlement monies: $17.12 million / 5 years - $ 3,424,000 yr.

$3,424,000/ $155,230,000 (2003 operating income) – **2.21%**

China Shipping Litigation settlement: $10 million/ 5 years - $2 million/ yr.
$2,000,000 / $155,230,000 – **1.3 %**

Combined contribution – $5,424,000 / year
$ 5,424,000 / $155,230,000 – **3.5%**

Port of Oakland

$1.48 million spread over 5 years - $296,000 / year
$296,000 / $31,556,000 (2003 maritime operating income) – **1%**

The program funding by the Port of Oakland and the Port of Los Angeles's non-litigation settlement monies for the Gateway Program appear to be comparable to the Port of Stockton situation. The China Shipping monies were derived from the settlement of litigation; the Port of Stockton, on the other hand, is still subject to ongoing litigation.

As the above comparisons show, the range in percentage of operating income that the Port of Oakland and the Port of Los Angeles contribute annually, based upon a five year program length, toward truck replacement and truck retrofit are from 1% to 2.21%, respectively. If the China Shipping settlement monies were counted, the range would be from 1% to 3.5% with the average contribution being 2.25%.

The Port has committed to implement a West Complex Air Emissions Reduction Program (Program) that requires the Port of Stockton to establish an Air Emissions Reduction Account into which the Port will deposit, at a minimum for five years beginning with the opening of the Daggett Road Bridge, 2.3% of the Net Operating Profit derived from the West Complex. The Program funds, consistent with the Commission's condition, shall be applied towards reducing diesel truck emissions, but program flexibility would allow monies, subject to the approval of the Executive Officer, to be spent on other air quality measures upon the showing, in consultation with the San Joaquin Valley Air Pollution Control District and the State Air Resources Board, that a greater air quality benefit would be produced through the expenditure of funds for emission reduction measures other than truck replacement or retrofit.

EXHIBIT:

A. West Complex Air Emissions Reduction Program

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

ACKNOWLEDGE THE WEST COMPLEX AIR EMISSIONS REDUCTION PROGRAM, DESCRIBED IN THE ATTACHED EXHIBIT A, AS SATISFYING THE CONDITION IMPOSED BY THE COMMISSION AT ITS MEETING OF DECEMBER 9, 2004, FOR ITS APPROVAL OF THE PUBLIC AGENCY LEASE TO THE PORT OF STOCKTON FOR THE CONSTRUCTION OF THE NEW DAGGETT ROAD BRIDGE.

EXHIBIT A

West Complex Air Emissions Reduction Program

The Port of Stockton, when evaluating a proposed use or activity within the West Complex Development Plan, will determine: 1) if such use or activity will result in an increase of truck trips to and from the Port; and 2) the feasibility of incentives to truck owners to "retrofit, repair, or replace diesel engines in trucks and purchase new trucks to replace pre-1984 models." Such a program will be limited to trucks that would serve uses or activities within the West Complex.

As part of this program, the Port elects to establish an Air Emissions Reduction Account (Account) into which the Port will deposit, at a minimum for five years beginning with the opening of the Daggett Road Bridge, two and three-tenths percent (2.3%) of the annual net operating profit from its tenant leases within the West Complex. Such leases currently account for approximately thirty-four percent (34 %) of the Port's total net operating profit for 2003-04, as such is indicated at page 37 of the Port's Annual Financial Report ending June 30, 2004. Monies within the Account may only be used for programs or equipment to reduce emissions from diesel trucks and improve air quality in and around the Port, including, but not limited to, use as matching funds to obtain grant monies from Federal or State programs or private organizations to achieve further reductions in truck associated air emissions.

The Port shall apply this program to the trucks, using the emission reduction measures that will produce the greatest diesel emission reductions for Port related truck use; e.g., consideration of frequency of truck visitations to and from the Port. The Port shall determine annually, in consultation with the San Joaquin Valley Air Pollution Control District and the State Air Resources Board, the applications that meet this standard. Should the Port determine that another use of the funds in the Account would produce a greater air quality benefit than the program described above, the Port may use the Account for such other use upon approval of the Executive Officer of the California State Lands Commission.

The program described above does not limit the air quality mitigation measures that the Port may otherwise be required to provide by the CEQA or other laws.

The Port, within thirty days of the close of its fiscal year, shall provide a financial report to the Commission. Such report shall include, but is not limited to, the amount of net operating profit attributed to leases within the West Complex and the methodology used to determine such net revenue, deposits into and allocations from the Account, and a description of the emission reduction measures funded and their effectiveness.