MR. HORTIG: Well, if I may summarize, Mr. Chairman, Mr. Brown's specific problem is not one that is on the agenda for the Commission for consideration today. Mr. Brown has a difference of legal opinion with the City of Long Beach and possibly with the Office of the Attorney General; and in the final analysis, the type of contract approval which Mr. Brown is seeking here today, as I understand it, is the type of approval which would normally and heretofore without exception has resulted only from an application from the City of Long Beach to the State Lands Commission for approval, and we have no such application from the City of Long Beach.

MR. BROWN: May I offer this comment as to that, Mr. Hortig. It was my understanding that the City had consulted with the staff of the Commission as to the necessity of presenting this contract for approval by the Commission and that it had been advised that such consent was not necessary; and I believe that that is, perhaps, the reason no formal request was submitted.

This work that the City wants to have done, and for which it has awarded a contract to the Gober Drilling Company to do, is of utmost urgency to the City. My interest is in getting some basic policy decision, under which the City would be enabled to go ahead, the contractor would be enabled to proceed with doing the work the City so urgently wants. I feel that he can't do it without the Commission's consent. My information is that the staff of the Commission has

indicated that such consent is not necessary. I would feel that the Commission would be in a position of certainly not losing anything in any event. It has everything to gain, not to lose, by giving its consent; and if the Commission can assist me in some way in directing the means by which the consent can be obtained, I would certainly appreciate it.

GOV. ANDERSON: We haven't been approving all the individual items that have been coming up for the City of Long Beach this way, have we?

MR. HORTIG: As a normal procedure, the Commission has not, and has been guided by the opinions of the Attorney General's office since the inception of the Chapter 29 Statutes of 1956. It is pointed out and was pointed out, and has served as a guide post to the Commission, not to enter into the day to day service contracts, by their opinion saying:

> "The City remains the trustee of the Long Beach tidelands, with the power and duty of developing their hydrocarbon resources for trust purposes. In general, a trustee may exercise such powers as are necessary or appropriate to carry out the purposes of the trust and are not expressly forbidden by the terms of the trust. Where, as here, discretion is conferred upon the trustee with respect to the exercise of a power, its exercise is not subject to control by the court or the beneficiary

"except to prevent an abuse by the trustee of his discretion. We do not believe that these principles are greatly affected by the general supervisory authority conferred on the State Lands Commission by Section 8(b) of Chapter 29.

However, Section 10 of Chapter 29 confers the additional authority upon the Commission to approve new operating contracts or modifications to existing contracts. In light of this section, the Commission should not approve any contract or amendment which is drafted in such broad terms that the agencies could bring about major policy changes without getting new approval from the Commission. On the other hand, a contract or amendment should have sufficient flexibility so that the parties may work out methods of implementing policy objectives without the necessity of repeated Commission action."

This has been summarized further in other places by Deputies of the Attorney General's office as indicating that the best analogy of the position of the Commission in connection with oil and gas operations is the status of a silent partner in a partnership, where day to day operations, day to day contracting and so forth, are under the complete control (subject only to post review) - - under complete control of the active party, or, in this case, the City of Long Beach.

GOV. ANDERSON: Does the Attorney General's office wish to comment on this? Do you feel this is something under our purview?

MR. GOLDIN: Mr. Chairman, I think a brief explanation of the reasons why our office believes that this particular contract does not require Commission approval might be in order.

Now, it is our firm belief that Section 10(a) was intended to apply to drilling and operating contracts as distinguished from the present contract, which is merely a construction contract. In that connection I respectfully direct the Commission's attention to the language of Section 10(a), which talks about contracts made and entered into with the highest responsible bidder. Now, quite obviously, in the case of this construction contract, the person who got the bid was not the highest responsible bidder but rather the lowest responsible bidder.

I further direct the Commission's attention to the very last sentence of Section 10(a), which reads as follows:

> "All specifications and forms for the purpose of writing bids and in connection therewith shall be approved by the State Lands Commission prior to publication of notice to bidders."

Now, in the instant case, the contractor, Mr. Brown's client, has come in right in the middle of the proceeding. There was no opportunity afforded to the Commission to review

specifications and forms for the purpose of inviting bids at all. It was only after the bids were awarded that Commission approval has been sought for this particular contract and, as I stated previously, it is our opinion that Section 10(a) does not require Commission approval of this particular contract.

MR. BROWN: May I make one further brief comment? I appreciate the opportunity to speak upon this at all and will endeavor to keep my remarks very brief. I am highly respectful of Mr. Goldin's comments about the effect of this statute. I have, however, submitted this same question to at least three other eminent lawyers in Long Beach, who share the same concern that I do as to the interpretation which would be put upon it by a court. Now, the thing that makes law suits is difference of opinion between attorneys.

Mr. Gober of the Gober Drilling Company -- neither he nor any other contractor with the City -- should be placed in the position of being in jeopardy of receiving pay for what they do. I don't think anyone would dispute that. Certainly if a court would rule that this contract is one which by reason of its nature should have the consent of the State Lands Commission, Mr. Gober would not be able to be paid for what he did regardless of how beneficial it might be for the City or the State. It is just not right that a contractor should have to assume the hazard of being correct in his interpretation of this statute or that anyone is correct in

1 interpreting the statute except a court of law. Therefore,
2 I think it would be a great service to the City of Long
3 Beach, and certainly would be of service to a contractor who
4 wants to do a good job, for the Commission to take cognizance
5 of this matter and as soon as it can be done give its consent
6 to the contract if it finds that it should give its consent
7 to it.

8 GOV. ANDERSON: I'd like to get the views of the City
9 of Long Beach on this, if the City Attorney could let us
10 know what they are.

11 MR. BRADY: Thank you, Mr. Chairman. My name is
12 Philip Brady. I am Deputy City Attorney, City of Long Beach.
13 We were not unaware of the problem that existed. If I
14 might brief you in a few short words concerning the manner
15 in which this situation arose: The Long Beach Oil Development
16 Company is the principal tideland operator for the City of
17 Long Beach. Under its contract it pays for all of the costs
18 and expenses of drilling the oil wells, maintaining the oil
19 wells, and also drilling and operating the water injection
20 wells that the Board of Harbor Commissioners of the City of
21 Long Beach directs it to drill. It then receives its reim-
22 bursement back from 55.55% of the oil revenue from the parcels.

23 Under the amendments to the Long Beach Oil Development
24 contract which authorizes the drilling of the injection wells
25 and repressuring operations, there is a provision that in the
26 event the Long Beach Oil Development cannot foresee that

1 within a ninety-day period following the directions of the
2 Board to drill certain water injection wells it will be able
3 to get reimbursement for the costs and expenses of drilling
4 those wells, it can elect not to drill those wells and it
5 will not be in default of its contract.
6 Now, we are faced with that situation at the present
7 time. As you are well aware, in having approved the various
8 cooperative agreements and other agreements in the past
9 several months, we have an accelerated program of repressuri-
10 zation in the Long Beach area. Particularly, we have been
11 directed to go ahead with the Naval Shipyard in Fault Blocks
12 I and II. The Long Beach Oil Development Company in that
13 particular area is operating, as you might term it, in the
14 red. When the Board of Harbor Commissioners directed them to
15 drill these particular water injection wells, they had no
16 alternative but to say they could not drill them because they
17 could not get their money back in the foreseeable future;
18 and, therefore, the City approached this problem with the
19 State Lands Commission's staff and the Attorney General's
20 office for the purpose of determining if there would be some
21 way of expediting the program and of getting the water injec-
22 tion wells drilled, which the Long Beach Oil Development Com-
23 pany agreed (after the wells were drilled) it would take over
24 and operate and maintain subject to the reimbursement from
25 the 55.55% of the oil revenue.
26 We discussed this at length. It was pointed out that

1 these particular wells were not wells drilled for the produc-
2 tion of oil, but they were water injection wells drilled for
3 the purpose of implementing the repressuring program which
4 had been approved by the State Lands Commission heretofore,
5 as Mr. Hortig indicated, with an eight million dollar ceiling.
6 We indicated that in all these wells which would be drilled
7 by the City under separate contract, the cost and expense
8 would be chargeable to the eight million dollar ceiling and
9 would be considered a part of the Long Beach Oil Development
10 repressuring program. The wells as such have nothing to do
11 with the operation or the production of oil. As to Section
12 10(a) of Chapter 29 as originally drafted back in 1956 --
13 it is my feeling (without committing the Attorney General's
14 office, I feel we could share the same view) that it was for
15 the purpose of protecting the undeveloped areas of the Long
16 Beach tidelands from future oil development without first
17 submitting any bid proposal that the City might have to the
18 State Lands Commission, to determine whether or not it was a
19 fair and equitable contract arrangement for oil production.
20 Now, we come to the position where we have to implement
21 the repressuring program. The City feels that the Lands Com-
22 mission has given approval to the repressuring program. The
23 wells which are going to be drilled are wells which are approved
24 in the plans of the Oil and Gas Supervisor, on which public
25 hearings were held. They are not going to be producing wells.
26 They will be turned over to the City's operator for injection

1 purposes as soon as they are drilled.

2 I have nothing but admiration for Mr. Brown in pro-
3 tecting his client, but he has one client and one contract;
4 the City of Long Beach has many operators and many problems,
5 and if we are going to set a precedent today that each
6 particular contract, however remote, will have to be approved
7 by the Commission (which meets on a general basis of once a
8 month) you can see where the City's operations are going to
9 be. Where are you going to draw the line? If the City pur-
10 chases a caisson which it is going to furnish to a contractor
11 at a future date for injection well purposes, we are going to
12 have to come up once a month to the Commission and submit a
13 contract for approval.

14 The City is of the view we cannot enhance the repres-
15 suring program by getting particular approval of every con-
16 tract that might in some degree relate to the water injection
17 program.

18 Now, the water injection program has been approved in
19 principle by the Commission; it has approved the expenditure;
20 the staff of the Commission is advised of the operations be-
21 ing conducted. We would certainly welcome any considerations,
22 objections, or representations of the staff in that regard,
23 but we feel that we do not want this precedent set.

24 The City Attorney's office is preparing a contract
25 which it will submit to Mr. Gober and under the contract it
26 is provided that he has ten days within which to execute the

contract or forfeit his bond. That's a matter which Mr. Brown will have to recommend to his client, but we feel at this time that we do not want any such precedent set, whereby every matter related to this program is going to have to be brought before the Commission.

GOV. ANDERSON: Mr. Carr, I believe, would like to ask a question.

MR. CARR: Mr. Brady, do I understand you to say that instead of accelerating this program, as Mr. Brown represents, that we would actually be slowing down the program if we set such a precedent that each and every such contract would have to be brought up for prior approval of the Commission?

MR. BRADY: Yes, I definitely do, because the language of Chapter 29 says "any contract relating to .....

MR. CARR: Isn't it, according to the staff recommendation -- it's pretty clear at least as far as the Attorney General's office, your office and the staff is concerned, that Mr. Gober or any contractor in these circumstances apparently is not in the perilous position Mr. Brown fears, is that right?

MR. BRADY: That is the position of our office.

MR. ZWEIBACK: Mr. Brady, if the Commission were to look favorably upon this request by Mr. Brown, this would be some recognition that all of the bidders for supplies or well drilling contracts and so forth are now in a perilous



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position unless they get this advance approval. Doesn't this also mean this is a major shift in policy and, in effect, instead of Long Beach being the trustee of the day to day operations, the entire work load would then transfer to the staff of the Lands Commission; and that every one of these items for a case of nails, or a fifty or fifty thousand dollar contract would have to come before the State Lands Commission?

MR. BRADY: Yes sir, and at least it would be an implied recognition by the City that a precedent had been set, that all future contracts relating thereto would have to come before the Commission; and, also, an implicit statement that the contractors who have already performed similar services for the City have illegal contracts, for which reimbursement has already been made, and they would be subject to paying back to the City; and we would not like to place them in that position.

GOV. ANDERSON: I don't know what the other members think, but we have had considerable discussion of this in the past and it is the Chair's feeling that this is a matter which requires no Commission action. Unless there are some comments - - (no response) - - if not, this will be ruled out of order as requiring no Commission action.

MR. BROWN: Thank you very much.



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GOV. ANDERSON: Item 14 -- Report on status of major litigation.

MR. HORTIG: Item 14 is for the information of the Commission on the status of major litigation to which the Commission is a party. There are no practical changes since the last report to the Commission, but the status as we state it here is in order that the Commission may have current information as to the litigation calendar.

GOV. ANDERSON: Anything further on it? (No response) If not, then, we will move to Item 15. Is there anything else before we take up the matter of the meeting date?

MR. HORTIG: No further business known to the staff.

GOV. ANDERSON: Any members have anything? Mr. Carr?

MR. CARR: No.

GOV. ANDERSON: Mr. Cranston?

MR. CRANSTON: No.

GOV. ANDERSON: If not, then, the next meeting of the Commission will be in Sacramento -- Thursday, nine a.m., October first. If there is no further business the meeting stands adjourned.

ADJOURNED 10:25 A.M.

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## CERTIFICATE OF REPORTER

I, LOUISE H. LILLICO, reporter for the Division of Administrative Procedure, hereby certify that the foregoing thirty-nine pages contain a full, true and correct transcript of the shorthand notes taken by me at the meeting of the STATE LANDS COMMISSION in Los Angeles, California, on August 27, 1959.

DATED: Sacramento, California, August 31, 1959.

Louise H. Lillico



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