TRANSCRIPT OF
MEETING
of

STATE LANDS COMMISSION

SACRAMENTO, CALIFORNIA

NOVEMBER 15, 1960

PARTICIPANTS:

THE COMMISSION:

Messrs. Alan Cranston, Controller, Chairman
Glenn M. Anderson, Lieutenant Governor
John E. Carr, Director of Finance

F. J. Hortig, Executive Officer
Don Rose, Executive Secretary to the Lieutenant Governor
Kenneth C. Smith, Public Lands Officer of State Lands Division

OFFICE OF THE ATTORNEY GENERAL:

Mr. Jay L. Shavelson, Deputy Attorney General

APPEARANCES:

(In the order of their appearance)

Mr. Ralph N. Kleps, in behalf of Deep Springs College

Mr. Francis C. Whelan, Attorney-at-law, representing Adrienne C. Burke

Mr. F. J. Shafer, Texas Company

Reporter: Louise H. Lillico
Division of Administrative Procedur

JM SFO

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1 MR. CRANSTON: The meeting will please come to order.
2 The Lieutenant Governor is Acting Governor of the State in the
3 absence of Governor Brown at the present time and is required
4 elsewhere at present. He probably will be with us later in
5 the morning but I think we should proceed without him.
6 The first item is confirmation of the minutes of
7 August 25, 1960. If there is no objection, they will be con-
8 sidered as approved.
9 Item 2 is permits, easements, leases, and rights-of-
10 way issued pursuant to statutes and established rental and fee
11 policies of the Commission. Item (a) is Columbia-Geneva Steel
12 Division of United States Steel Corporation of San Francisco.
13 If there is no comment, we will run through those in each
14 classification and then vote on them as a group. Item (b) is
15 Columbia-Geneva Steel Division of United States Steel Corpora-
16 tion of San Francisco. Item (c) ....
17 MR. HORTIG: Mr. Chairman, at that point, item (c) --
18 the request for approval of crude oil sales contract for Hono-
19 lulu Oil Corporation, it is recommended that action be deferred
20 at the request of the applicant and with the concurrence of the
21 Office of the Attorney General, for further discussion of some
22 of the legal interpretations involved.
23 MR. CRANSTON: That will be held aside?
24 MR. HORTIG: Yes sir.
25 MR. CRANSTON: Item (b)?
26 MR. HORTIG: (c).

MR. CRANSTON: (c). Item (d) - J. H. Marion; item (e) Pacific Gas and Electric Company; item (f) James H. Zacharias, et al., and item (g) Trustees of Deep Springs, Administrators for Deep Springs College....

MR. HORTIG: Mr. Chairman, before going to item (g), may I ask if the Chairman might inquire if there are any representatives of the Small Craft Harbors Commission that wish to make any appearance on item (f). This is one of the type leases on which Small Craft Harbors has been informed and, lacking any objection, that lack of objection is considered by the State Lands Commission as approval of the leasing program.

MR. CRANSTON: Is there anyone here representing Small Craft Harbors? (No response) Apparently not. Then we are on Deep Springs.

MR. KLEPS: Mr. Chairman, I would like to say a few things with respect to that item. I want to say I am appearing here in a private capacity. Actually, I am appearing as one part of whose education was due to the institution whose interest is at stake. There are two minor items that have already been discussed with the staff and have been taken care of. One is the actual name in which the matter should vest. This is an unincorporated association, board of trustees under a deed of trust, and all the property they own is listed with the specific names of the acting trustees now and their successors, and they would like to have title in those granted names.

MR. CRANSTON: Is that properly arranged?

1 MR. HORTIG: Yes sir.

2 MR. KLEPS: The other matter has to do with a re-
3 strictive clause with respect to the use of the easements. It
4 says that -- this is item or clause four on page 3 of the draft
5 I have here -- that the easement shall be used for the sole
6 and exclusive purpose of transmitting water across the premises
7 to the Deep Springs College, and they would like to have that
8 restrictive "to the Deep Springs College" eliminated, so it
9 would read: "... for the purpose of transmitting water across
10 the described premises to the property owned by the trustees
11 of Deep Springs ..." or, eliminating that entirely, simply
12 making it "... for the purpose of transmitting water across the
13 described premises."

14 MR. HORTIG: Mr. Chairman, I have our staff memorandum
15 on the same subject, expressing concurrence and nonobjection
16 and recommending that the second recommendation of Mr. Kleps
17 is acceptable and the description would be solely "for the
18 purpose of transmitting water across the described premises,
19 together with rights of ingress and egress."

20 MR. KLEPS: Now, the third thing ....

21 MR. CRANSTON: Mr. Whelan, would you like to comment?

22 MR. WHELAN: Well, if the purpose is merely to conform
23 with the use of the premises, the premises being owned in the
24 names of these individuals for trust purposes -- if that is the
25 purpose of it, it seems to me to be thoroughly satisfactory.
26 This matter was considered, of course, that it was for college

1 purposes and for public educational purposes, and that was the
2 understanding that I had understood the easement was being
3 granted by the State -- for this purpose.
4 MR. CRANSTON: That is the purpose as far as we are
5 concerned.
6 MR. CARR: Is there any other possible interpretation?
7 MR. KLEPS: I don't think so.
8 MR. HORTIG: Staff counsel did not indicate any
9 other possible interpretation either, Mr. Carr.
10 MR. CARR: What were your misgivings directed toward?
11 MR. WHELAN: I just didn't know. I understood this
12 property was a college and it was only proper that the water
13 should be continued to be made available for that purpose; and
14 it was my understanding that the trustees were acting on behalf
15 of the college; and so, while I didn't have anything to do with
16 the construction, with the language of it, it carried out, as
17 I understood, what the real purpose of the easement was, to wit,
18 for college purposes and actually "for transmission to Deep
19 Springs College" it would seem to me to have been satisfactory.
20 This is the first time that I have any knowledge about it. I
21 just wonder why the necessity of the removal of the qualification.
22 MR. KLEPS: I think, Mr. Chairman, that the term
23 "for Deep Springs College" is not accurately descriptive of
24 the total purposes of the institution; in fact, it isn't a
25 technically accurate term. It isn't referred to as a college.
26 This is an institution that exists under a deed of trust. It

1 might be possible to think of some restrictive language that
2 would be better, but our thought was that there was no need
3 to do more than to say this easement was designed to take water
4 across the described premises to the property owned by the
5 college, by the lessee.

6 MR. CARR: In other words, the right-of-way goes with
7 the property. There might be a change in the structure of the
8 college. The idea is that the easement for transmitting the
9 water, transporting the water, goes along with the land.

10 MR. KLEPS: That's right.

11 MR. CARR: I think that's right.

12 MR. HORTIG: I believe there is another point that
13 might clarify and eliminate Mr. Whelan's concern. It is
14 believed that all parties know that the trustees own farm land
15 irrigated by this pipeline and ditch of long existence, and
16 these are the structures for which the easement is proposed to
17 be issued. Therefore, the words "to the Deep Springs College"
18 may be too restrictive, since particularly the trustees are
19 entitled to irrigate all the lands they own by use of the pipe-
20 line easement, so long as they don't alter its size or location,
21 which they wouldn't of course do and could not do in the form
22 of the easement proposed today.

23 MR. WHELAN: That is obviously true and that certainly
24 was known -- that they did operate a ranch. As I understood,
25 the ranch was a part of the college operation incidental to the
26 type of operation of some colleges, such as Thatcher School.

I would like to ask if it wouldn't be just as good for the purposes of the trust," to the trustees in conformance with their trust."

MR. CARR: Why would it be any better than this language? Why make it more restrictive? Who would be hurt by the language proposed here?

MR. WHELAN: Then may I ask - - my recollection is that .... I'll withdraw that. Does the proposed qualification say "to the lands owned by the individuals under trust"? May I ask counsel if that is what he proposes?

MR. KLEPS: No. As I understand it, the staff preferred and we would accept the deletion of the words "to the Deep Springs College" so that it will read as follows: "The described land shall be used during the term hereof for the sole and exclusive purpose of transmitting water across the hereinabove described premises." As your staff suggested it, I think it does not have any limiting effect at all. It simply indicates that the easement is across this portion of State lands for the purpose of transmitting the water across it.

MR. WHELAN: May I be heard? Then it is an easement in gross rather than an appurtenance to the lands. If it would say "to the lands owned by these individuals" then it would be an appurtenance to those particular lands and that would be satisfactory. This is an easement in gross the way it is worded now.

MR. CARR: Do you object to that?

MR. WHELAN: I think it should be an appurtenance to the lands.

MR. CARR: Why?

MR. WHELAN: This way it could be used for transmission of water to any other lands in the area rather than just to these people.

MR. CARR: Well, would that be bad?

MR. WHELAN: I just thought that the question as it applied to the application was to save the rights which had already been in existence, that is which had been used, and as the easement which had been used is concerned, it is an appurtenance to the lands to which the water is now being brought; and I thought it was to maintain that use rather than to extend it for all and general purposes. If it is as an appurtenance to the lands which are owned by these individuals, then it is maintaining the use which they have been making of this ditch line and pipe line in the past.

MR. KLEPS: I might comment to the board that this property and this easement have actually been in use since 1869 and predecessors in interest, for example, of the trustees first b ought water across this land before the State of California acquired title to it; and the trustees are convinced that if this were litigated out, they might have rights that antedated the State's. We don't think the language used here is, in other words, going to limit the right of the trustees based on their predecessors', but we don't like to see any

1 limitation put in if one is not needed.

2 MR. WHELAN: I believe with respect to the prior use
3 prior to the State, that would apply from what I understand to
4 the ditch line, not to the pipe line. As I say, all of the
5 rights -- whether it be for the college or whether the trustees
6 should sell the property -- would be maintained if it was
7 stated it was a pipe line to the lands, not saying to the
8 Deep Springs College but to the lands.

9 MR. KLEPS: I might say we were proposing as another
10 alternative ".. to the property owned by lessee in Deep Springs
11 Valley." That would also be acceptable to us.

12 MR. WHELAN: That would be satisfactory. I presume
13 they don't own any other property other than this general piece
14 which is part of the general operation.

15 MR. CARR: Do you have an adverse interest in this,
16 Mr. Whelan? I don't know who you represent.

17 MR. WHELAN: I am sorry. I represent the applicant,
18 Adrienne C. Burke, which is item 3(a).....

19 MR. CARR: That's what I wanted to know.

20 MR. WHELAN: ... and the application to purchase was
21 made and then the application for this easement and other certain
22 easements, utility company easements, were made subsequently to
23 the application for purchase. When this matter was first upon
24 the calendar -- I believe it was last April or May -- the matter
25 of the application of Burke was continued and then during this
26 interim I have had occasion to talk to Mr. Lyon, attorney for

1 the Deep Springs College, as well as to one of the trustees,
2 and on several occasions to Mr. Blacker respecting the terms
3 of the easement. I did not suggest the particular language.
4 I had no knowledge until this morning that there was any change
5 in the easements as suggested by the staff and as submitted to
6 me and to counsel for the trustees.
7 MR. CRANSTON: Well, if the two of you have agreed
8 on substitute language, I think that language might be substi-
9 tuted if there is no objection from the staff.
10 MR. HORTIG: No sir, there would be none in view of
11 the fact, to carry the record back one more step in the inter-
12 est of completing it -- as Mr. Kleps suggested this language
13 had been suggested by staff -- the genesis or its originator
14 or suggestor is Mr. Lyon, representing the Deep Springs College.
15 MR. WHELAN: Yes, I so understand.
16 MR. HORTIG: So the staff certainly have no objection
17 to the alternative language proposed here this morning.
18 MR. CRANSTON: Did you get that language exactly as
19 agreed to a moment ago?
20 MR. HORTIG: We have it in the transcript.
21 MR. CRANSTON: Let's leave it that way.
22 MR. CARR: Is that agreeable to you?
23 MR. KLEPS: Yes.
24 MR. CRANSTON: Is this a 49-year easement or .....
25 MR. KLEPS: This is the other point I wanted to raise
26 with the Commission. As drafted, this provides a 49-year

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1 easement from the State and at the conclusion of that 49-year
2 period the right to transmit water across this property based
3 upon that easement will terminate and the trustees at that stage
4 will be forced to negotiate with whoever owns the land at that
5 moment, Mr. Whelan's client or their successors in interest,
6 at a point when the whole operation of the institution will be
7 dependent upon the continued ability to get water across this
8 piece of property. Now, 49 years is quite a while. I wanted
9 to ask whether the Commission had considered the possibility
10 of reserving to the State the right to grant a further easement
11 at that time, rather than at this time to state that 49 years
12 is the maximum period the institution is going to be able to
13 transmit this water and at the conclusion of that period are
14 going to have to negotiate with whoever owns that property
15 knowing that the operation of the institution depends for life
16 or death on the bargain at that moment.
17 MR. CRANSTON: Mr. Hortig, will you comment on that?
18 MR. HORTIG: Yes. In the staff reviews with Mr. Lyon,
19 counsel for the trustees, the question of the easement term was
20 researched preliminarily. It appeared, although this was not
21 conclusive from the Office of the Attorney General, that the
22 maximum authority of the Commission was to issue a 49-year
23 easement at this time. It was not clear that there either was
24 or was not authority to consider the retention, in effect, of
25 the Commission easement in perpetuity, based upon which the
26 Commission 49 years hence could issue a new easement; and in

1 the lack of clarity, Mr. Lyon expressed on behalf of the
2 trustees agreement to and acceptability of this 49-year term
3 of the right-of-way easement.

4 Now, if this is a definite question that has been
5 raised on that by Mr. Kleps this morning and if the Commission
6 wishes to consider this, then in order to be able to inform the
7 Commission we would have to have a deferment of this item in
8 order to refer the question to the Attorney General's office,
9 as the Commission's legal consultant, to state conclusively
10 that the 49-year term is the maximum or that there are alterna-
11 tive bases that the Commission could consider as suggested by
12 Mr. Kleps.

13 MR. CARR: Mr. Chairman, it seems to me that the
14 State in granting this right-of-way should give primary con-
15 sideration to the established rights of the Deep Springs insti-
16 tution and I fail to see where Mr. Whalan's client is going to
17 be damaged by making these easements highly protective to the
18 owners of the school, whoever they may be in the future. Their
19 claim to this water, this right-of-way, goes back a long way,
20 much further than the claim of Mr. Whelan's client. I would
21 be in favor of - - why can't this easement be granted for 49
22 years with a reversionary interest to the State rather than to
23 Adrienne C. Burke? Why can't the reversionary interest be to
24 the State rather than the owners of the property?

25 MR. HORTIG: Mr. Chairman, if I may presume to answer
26 Mr. Carr in the presence of a gentleman certainly more qualified

to go into the legal propriety of this situation, this was one of the elements of doubt in the prior review and this was one of the possible alternatives that was researched; and under present law, when vacant State school lands are sold by the Commission, they are sold subject to the easement and with specific inference, if not actual direction in the statute, that the easement rights when they terminate and as to the area over which they terminate, that this is acquired by the purchaser of the lands, who has bought these lands subject to these particular easement rights.

Now, whether the alternative Mr. Carr has suggested could be accomplished would necessarily, I think, and desirably be an item to be included in this research for determination of all questions, if the Commission desires this to be explored in view of Mr. Kleps' suggestion here today.

MR. WHELAN: Of course, I might add, under the terms of the easement the trustees expressly -- the State expressly keeps open the prescriptive rights of the trustees. In other words, by taking the easement from the State there is no admission on the part of the trustees that they do not have prescriptive rights and, as counsel has stated, there is in existence a map (I have seen a copy of a map) which shows what appears to be a ditch and it has on it the words "Gillespie Ditch"* and Mr. Lyon, counsel for the trustees in Los Angeles, has stated that is the location of this ditch line.

MR. CRANSTON: If there is doubt as to where the college

* phonetic

would stand on this matter of the 49 years, I suggest we refer it to the Attorney General.

MR. CARR: The college has been in existence for more than 49 years -- I happen to know somebody who is an alumnus -- and it seems to me they should be protected. In fact, it surprises me that the college didn't ask to purchase this property so they can have perpetuity.

MR. KLEPS: I am not sure anyone can answer that. I am not sure anyone knows where this Section 36 was in reference to this ditch that was here for many years. In fact, when the application came in here, it turned out it was unoccupied State land and there were utility pole lines, etc. This is an isolated part of the State and even the utility companies did not protect themselves.

MR. CARR: I think we should be very sure what we do on this.

MR. CRANSTON: Do you want to make a motion?

MR. CARR: I move we defer it.

MR. CRANSTON: I second it.

MR. WHELAN: Do you have any definite continuance on it?

MR. CRANSTON: We should have information at the next meeting.

MR. CARR: I realize Mr. Whelan is anxious to get this property for his client, but I think prior rights should be settled before we give it away.

MR. WHELAN: I agree, Mr. Carr, and, as a matter of fact, we had some conversations long before this matter came before the board in the first instance, in which I -- with authority from my client -- offered to grant these easements, to enter into an agreement for the granting of them upon the basis which would have been a perpetuity and for a very modest sum -- certainly much less than they must have been put to for the expense of counsel in the meantime -- but they chose not to do it that way; but those offers were made before the application of Burke to purchase ever came before the board. And we also discussed informally the question of granting this easement in perpetuity after the 49-year period. That was after the matter had come before the board, so that it would not be difficult at all to solve this matter.

MR. CRANSTON: I presume it can be solved at our next meeting and then we can dispose of the matter. If there is no further objection or discussion, the motion made by Mr. Carr is unanimously approved.

MR. WHELAN: Is the next meeting in Los Angeles?

MR. CRANSTON: Yes. We now go to approval of all items under heading (2) with the exception of (c) and (g). Do you wish to move their approval, Mr. Carr?

MR. CARR: I move approval.

MR. CRANSTON: Motion has been made, duly seconded and unanimously passed, approving item 2 with the exception of (c) and (g).

MR. CRANSTON (continuing) We now come to Item 3 -- Sales of vacant State school lands. All items here presented have been reviewed by all State agencies having a land acquisition program, unless otherwise indicated, and no interest has been reported by these agencies in the lands proposed for sale.

MR. HORTIG: Mr. Chairman, item (a) is the application on which action would be subject to prior action by the Commission on the Deep Springs easement. Therefore, this should be deferred, leaving only item (b) under this heading.

MR. CRANSTON: Item (b) San Bernardino County Flood Control District - Lands not reviewed with other State agencies as the area is subject to flash floods and the lands previously were withdrawn from sale on behalf of applicant. We have an appraised value and bid of $7,910.40. Is there any comment or discussion on that item? Mr. Carr?

MR. CARR: No, I move the approval of (b). I have some reservations about this next item.

MR. CRANSTON: Item (b) is moved to be approved and seconded, and unanimously so ordered.

Item 4 --Selection of vacant Federal lands for the benefit of the State: Item (a) - 160 acres in San Bernardino County. Application of Maurice William Nolan canceled at his request. Item (b) - 80 acres in San Bernardino County. Application of Lester J. Vilven disqualified for failure to deposit required funds within specified period. Item (c) - 80 acres in San Bernardino County. Application of Lester J. Vilven disqualified for failure to deposit required funds within specified

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period, John?

MR. CARR: Now, what is the significance of this, Mr. Hortig? That is my question, Mr. Chairman.

MR. HORTIG: The significance would be that there would be added, on approval of the Commission of the selection of the listed lands, there would be added 320 acres of vacant land to the vacant land list of lands under the control of the Commission for disposal pursuant to the trust requirements, which would also consist, therefore, of a 320-acre decrease in the deficiency of the total amount of lands that the Federal Government owes the State but has not heretofore granted.

MR. CARR: Mr. Chairman, I was talking to Mr. Hortig about these lands and some others in informal conversation and pursuant to the action of the board some time back, in which we wanted to get our inventory in shape so we knew what the State now owned and take a second look at it to determine what possible uses other than those agencies with whom we have clearance might have. I think maybe we are going to see some demand on the State for such things as housing aids and what not. I don't know whether they want to live out in the desert someplace, but I think we should get our inventory in clear shape in accordance with our previous policy before we get these lands out on the market. Mr. Hortig, how much does the Federal Government still owe us -- something like 200,000 acres?

MR. SMITH: Approximately 150,000 acres in lieu.

MR. HORTIG: This would be a 320-acre decrease in

that amount they owe us.

MR. CARR: Percentagewise .....

MR. HORTIG: It is a step in the right direction.

MR. CRANSTON: There is actually no action required.

MR. HORTIG: Yes, there is approval required by the Commission. Unless we have that, these transfers are not validated.

MR. CRANSTON: Approval and selection is moved and seconded, unanimously so ordered.

Item 5 - City of Long Beach: Item (a) Approval of adjusted average price of $0.21205 per MCF as the reasonable wholesale market value of tideland dry gas received by the Municipal Gas Department of the City of Long Beach during the period November 1, 1956 through June 30, 1959; approval of tentative price of $0.2348 per MCF, for period from July 1, 1959 until next price determination is made, subject to revision if warranted.

MR. HORTIG: Mr. Chairman, by way of brief explanation, the Commissioners will recall that under Chapter 29 of the Statutes of 1956 the State receives a 50% interest in the net value of the oil produced from tidelands by the City of Long Beach under operating contracts, and concurrently the State receives 100% of the value of the dry gas which is produced in conjunction with that oil production. The calculation of the amounts to be received by the State representing 100% of the value of the dry gas are by statute to be calculated on the

1 reasonable wholesale market value of tidelands dry gas as deter-
2 mined jointly between the City of Long Beach and the State Lands
3 Commission. The rates here proposed for approval by the State
4 Lands Commission have been established through extensive nego-
5 tiation, technical review, the employment both by the City and
6 the State of consultants in the gas marketing field, and complete
7 review by the Office of the Attorney General; and the rates here
8 proposed have been adopted by resolution of the City Council of
9 the City of Long Beach to be applicable if the State Lands Com-
10 mission concurs herewith.

11 MR. CARR: I move approval.

12 MR. CRANSTON: Approval has been moved, is seconded,
13 and without objection it is so ordered.

14 Item 6 - Authorization for Executive Officer to issue
15 patent to the Housing Authority of the City and County of San
16 Francisco covering lands valued at $3,700 in 1959, in exchange
17 for filled and unfilled tide and submerged lands, known as
18 Parcel 84, appraised in 1959 at $5,200, all located within the
19 Hunters Point Reclamation District in the City and County of
20 San Francisco.

21 MR. HORTIG: Mr. Chairman, the summary statement which
22 you have just read is completely correct. You have just been
23 handed a revised edition of the full calendar item, which revi-
24 sion has been recommended by the Office of the Attorney General
25 here in Sacramento after review of the previously completed
26 calendar item, in order that (for the same facts which you have