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TRANSCRIPT OF

MEETING

of

STATE LANDS COMMISSION

SAN FRANCISCO, CALIFORNIA

January 26, 1968

1 MEETING OF
2 STATE LANDS COMMISSION
3 SAN FRANCISCO, CALIFORNIA
4 January 26, 1968

5 PARTICIPANTS:

6 THE STATE LANDS COMMISSION

7 Hon. Houston I. Flournoy, Controller, Chairman

8 Hon. Robert H. Finch, Lieutenant Governor

9 Hon. Gordon P. Smith, Director of Finance

10
11 Mr. F. J. Hortig, Executive Officer

12
13 OFFICE OF THE ATTORNEY GENERAL

14 Mr. Jay L. Shavelson, Assistant Attorney General

15 Mr. N. Gregory Taylor, Deputy Attorney General

16
17 APPEARANCES:

18 (In the order of their appearance)

19 Mr. Robert Kinzie
20 Santa Cruz Yacht Club, Inc.

21 Mr. Kenneth K. Williams
22 Deputy City Attorney, City of Long Beach

23 Mr. Richard Dombrink
24 Chief of Real Estate Branch, Alameda
25 County Flood Control and Water
26 Conservation District

Mrs. Helen Lyons Freeman
President, Alameda Conservation Association

(continued)

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APPEARANCES: (continued)

Mr. William Siri
President, Save the San Francisco Bay Ass'n

Mr. Louis Butler
Save the San Francisco Bay Association

Mr. Harry Jackson
Secretary, Leslie Salt Co.

Mr. Walter Cooper
Resident, Foster City

I N D E X
(In accordance with Calendar Summary)

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<u>ITEM CLASSIFICATION</u>	<u>ITEM ON</u>	<u>PAGE OF</u>	<u>PAGE OF</u>
	<u>CALENDAR</u>	<u>CALENDAR</u>	<u>TRANSCRIPT</u>
1. Call to order			
2. PERMITS, EASEMENTS, RIGHTS-OF WAY, NO FEE:			
(a) City of San Mateo	11	1	1
(b) Pacific Tel. & Tel. Co.	31	4	1
(c) South San Luis Obispo County Sanitation Dist.	2	5	1
(d) State of California, Dept. Public Works Div. of Highways	35	7	1
(e) Trans-Bay Constructors	34	9	1
3. PERMITS, EASEMENTS, LEASES, RIGHTS-OF-WAY, FEE:			
(a) Santa Cruz Yacht Club Inc.	32	11	6
(b) 7 applicants as listed in Calendar Item 29	29	12	1
(c) Robert M. Edwards	1	16	1
(d) Paul F. Keeney, Jr.	27	18	1
(e) Lake Tahoe Park Ass'n.	30	20	1
(f) Timber Cove Inn, Inc.	25	22	1
(g) Jack T. Campbell dba Campbell Const. & Equip. Co.	3	24	1
(h) K. C. Wells, Jr., Joyce M. Wells, Casiano Land & Livestock Co. Inc.	26	27	1
(i) Humble Oil & Refining Co.	6	28	1
(j) Robert W. McCune & Wayne Winther dba Bridge Marina Yacht Club	28	30	1
(k) Standard Oil Co. of Calif.	4	31	1

I N D E X

(in accordance with Calendar Summary)

<u>ITEM CLASSIFICATION</u>	<u>ITEM ON CALENDAR</u>	<u>PAGE OF CALENDAR</u>	<u>PAGE OF TRANSCRIPT</u>
5. CITY OF LONG BEACH (continued)			
(b) Approval \$5000 for subsidence studies -- Lateral Ground-Surface Motion	20	54	2
(c) Approval expenditure \$906,915 R.M.S. QUEEN MARY	17	55	2
(d) Determination of subsidence costs, Nos. 401, 539, 684	15	58	2
6. LAND SALES AND WITHDRAWALS			
(a) Rejection of request of Dept. Fish & Game for withdrawal Sec. 16, T 12 N, R 15 E, and T 13 N, R 15 E	24	60	2
7. PROPOSED ANNEXATIONS			
(a) Punta del Norte Addition City of San Buenaventura	33	64	5
8. INFORMATIVE - Litigation	36	67	5
9. LAND EXCHANGE			
(a) Leslie Salt Co. exchange	37	70	22
10. Authorization for Attorney General to file amicus curiae brief/s in cases affecting valuation taxable interests arising from drilling and operating contracts, etc.	38	75	10
11. NEXT MEETING			69

I N D E X

(In accordance with calendar items)

	<u>ITEM ON</u>	<u>PAGE OF</u>	<u>PAGE OF</u>	<u>ITEM ON</u>	<u>PAGE OF</u>	<u>PAGE OF</u>
	<u>CALENDAR</u>	<u>CALENDAR</u>	<u>TRANSCRIPT</u>	<u>CALENDAR</u>	<u>CALENDAR</u>	<u>TRANSCRIPT</u>
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3	3	24	1	23	53	2
4	4	31	1	24	60	2
5	5	51	2	25	22	1
6	6	28	1	26	27	1
7	7	40	2	27	18	1
8	8	41	2	28	30	1
9	9	44	2	29	12	1
10	10	39	2	30	20	1
11	11	1	1	31		1
12	12	43	2	32	11	6
13	13	42	2	33	64	5
14	14	37	2	34	9	1
15	15	58	2	35	7	1
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18	18	35	2	38	75	10
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20	20	54	2	NEXT MEETING		69
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1 SAN FRANCISCO, CALIFORNIA, FRIDAY, JANUARY 26, 1968 - 10:10 A.M.

2
3 MR. FLOURNOY: The meeting of the Lands Commission
4 will come to order.

5 We have a rather extensive agenda. It is our under-
6 standing, however, that there are only three items on which
7 individuals are here who wish to be heard. Those relate to
8 the Santa Cruz Yacht Club; a matter concerning various suits
9 involving the City of Long Beach, County of Los Angeles, and
10 County of Orange, and certain other companies; and the matter
11 of the proposal concerning the lands of the Leslie Salt
12 Company. Unless we are informed to the contrary, we will
13 proceed on that assumption.

14 Therefore, we will proceed to the agenda and when
15 we come to those items that are subject to some discussion,
16 we will take them at a later time.

17 The first item of business is permits, easements,
18 and rights-of-way to be granted to public and other agencies
19 at no fee, pursuant to statutes; and there are some five of
20 those matters.

21 GOV. FINCH: Move approval.

22 MR. SMITH: Second.

23 MR. FLOURNOY: Unless there is objection, they will
24 be approved as indicated.

25 Item 3 -- Permits, easements leases and rights-of-
26 way issued pursuant to statutes and established rental

1 policies of the Commission. With the exception of the
2 Santa Cruz Yacht Club, item (a), is there any discussion?

3 GOV. FINCH: Move approval.

4 MR. SMITH: Second.

5 MR. FLOURNOY: There being no objection, the items
6 indicated will be approved.

7 Item 4 - Certain items of oil and gas and mineral
8 leases and permits issued pursuant to statutes and established
9 policies of the Commission. Is there any discussion or objec-
10 tion to any of those items as indicated, (a) down through (k)?

11 GOV. FINCH: Move approval.

12 MR. SMITH: Second.

13 MR. FLOURNOY: There being no objection, those
14 items will be approved.

15 Item 5, with regard to the City of Long Beach, some
16 four items, not including the one that we referred to earlier.

17 GOV. FINCH: Move approval.

18 MR. SMITH: Second.

19 MR. FLOURNOY: Without objection, those items will
20 be approved.

21 Item 6, having to do with land sales and withdrawals
22 one item. Is there any discussion on that matter?

23 GOV. FINCH: I'd like some explanation from
24 Mr. Hortig on that, please....

25 MR. HORTIG: Yes. Governor Finch.

26 GOV. FINCH: ... going to the question of the

1 relationship here between the State Lands Commission and the
2 Department of Fish and Game. I want to understand the
3 sequence and the recommendation.

4 MR. HORTIG: The State Lands Commission's rules and
5 regulations provide, with respect to lands that are available
6 for sale from the remainder of the vacant State School Land
7 Trust -- lands which were conveyed by the Congress to the
8 State for education -- that such lands may be withheld from
9 public sale on the request of a State or other California
10 agency, governmental agency, for a period not to exceed two
11 years, on an application of intention of such agency to pur-
12 chase such lands within two years.

13 The State lands in this instance have been previously
14 withdrawn on the request of the Department of Fish and Game.
15 This application by the Department of Fish and Game had not
16 been completed. Then there was an additional request, again
17 for a withdrawal, which it was reported to the Commission at
18 an earlier meeting was actually not a request on the part of
19 the Department of Fish and Game, but for the Bureau of Land
20 Management of the Department of Interior -- for which there
21 is no procedure for this type of operation, particularly, as
22 you will recall, you raised the question with the representa-
23 tives of the Bureau of Land Management how long it would take
24 to accomplish such a transaction, in view of the fact that we
25 have other applications by the State Lands Commission that
26 have been pending for eight to ten years that probably should

4
1 be resolved before we get into a different transaction with
2 the Bureau of Land Management.

3 GOV. FINCH: What indicated purpose did they have
4 at the time they first made the request for these lands?

5 MR. HORTIG: Fish and Game indicated that this was
6 to be a part of a land acquisition program for a Fish and
7 Game unit; but, as it turns out, then they stated that it is
8 actually a proposal to secure these lands for the Bureau of
9 Land Management for a Federal land management unit of uncer-
10 tain application or direction and uncertain total acreage.

11 MR. SMITH: Mr. Chairman, I wonder whether or not,
12 unless there is some urgency regarding this item as far as
13 this decision is concerned, we could put it off to the next
14 meeting, where a representative of the Department of Fish and
15 Game could explain this further.

16 MR. FLOURNOY: Of course we could do that; but, as
17 I recall, we did have a representative of the Department of
18 Fish and Game at this earlier meeting and that there was a
19 representative from the Bureau of Land Management.

20 GOV. FINCH: I am not asking that this be deferred.
21 I just wanted to be acquainted with the whole program, with
22 the conflict of a State program and Bureau of Land Management
23 program in using this kind of land; and I don't want to pro-
24 long the discussion here when we have a long agenda.

25 MR. FLOURNOY: Isn't it true, Mr. Hortig, that the
26 particular parcels involved have been held in abeyance for

1 two years by an earlier action, in response to an application
2 of the Department of Fish and Game, and that expired begin
3 with?

4 MR. HORTIG: That's true, Mr. Chairman.

5 MR. FLOURNOY: And now we are proposing to preserve
6 it for a rather tenuous operation for a long time, if the
7 Bureau of Land Management is the potential beneficiary, on
8 some kind of program?

9 MR. HORTIG: Because of that nebulous status, the
10 staff has recommended that the withdrawal not be made for the
11 benefit of a tenuous program.

12 MR. FLOURNOY: What is your desire, gentlemen?

13 MR. SMITH: I don't have anything.

14 MR. FLOURNOY: Do I have a motion to approve it?

15 MR. SMITH: Move it.

16 GOV. FINCH: No objection.

17 MR. FLOURNOY: Then that item will be approved.

18 Item 7 relates to the approval of certain off-
19 shore boundaries of the Punta del Norte Addition to the City
20 of San Buenaventura in an annexation situation and notification
21 of such approval. Is there any discussion or objection to
22 the approval of this item?

23 GOV. FINCH: Move it.

24 MR. SMITH: Second.

25 MR. FLOURNOY: No objection, so ordered.

26 Item 8 is informative only and that gets it down

1 to items 9 and 10. Let's move back and take up item 3(a),
2 the Santa Cruz Yacht Club, Incorporated -- their request for
3 a hearing with regard to the fees and waiver of fees for cer-
4 tain buoys in Monterey Bay, offshore Santa Cruz.

5 MR. HORTIG: Mr. Chairman, the staff recommendation
6 that fees not be waived on the application of Santa Cruz
7 Yacht Club for establishment of certain marker buoys the club
8 desires to establish for control of racing and other recrea-
9 tional purposes is not being recommended for the reason that
10 similar, and in one instance at least one identical, types of
11 installations are being operated by other private yacht clubs
12 with payment of a rental fee to the State Lands Commission,
13 pursuant to its established rental and leasing policies.
14 Therefore, this would be, in the view of the staff, an excep-
15 tion -- and for the exception no bases for justification, it
16 is felt, have been found by the staff.

17 However, on presentation of this matter to the club.
18 the applicant, a request was received for permission to appear
19 before the Commission on behalf of the representative of the
20 yacht club, to explain to the Commission the yacht club's posi-
21 tion -- why they feel a waiver is justified -- and a repre-
22 sentative of the yacht club is here this morning for this
23 purpose.

24 MR. FLOURNOY: Could we hear from him, then?

25 Will you come forward and identify yourself?

26 MR. KINZIE: Mr. Chairman, gentlemen, I am
28

1 Robert Kinzie. I represent the Santa Cruz Yacht Club. We
2 are a nonprofit organization located in Santa Cruz and we
3 wish to have racing markers in the State lands off the shore
4 of Santa Cruz. We are nonprofit. The markers are not only
5 used by us -- the use is extended to anyone who wishes to
6 race there. We have cooperated as much as we can on any
7 other question of the recreation department of the City of
8 Santa Cruz.

9 In our original application, the Coast Guard
10 expressed no interest in placing markers per se; they aren't
11 interested in buoys. The Army Corps of Engineers are inter-
12 ested in the use of buoys by fishermen for nets.

13 In view of the fact that there is no profit by the
14 use of these, that they are in during the whole year, and it
15 is approved by the Army Engineers -- particularly, they are
16 used by many other people, including the Santa Cruz Recreation
17 Department -- we ask that the fees be waived.

18 GOV. FINCH: How do we defend ourselves with other
19 yacht clubs down the shore, if there is a waiver for this one
20 and not a waiver for them?

21 MR. KINZIE: Most yacht clubs as far as I know,
22 pay no fees for racing markers.

23 GOV. FINCH: Mr. Hortig, what is the effect on the
24 clubs where a fee is paid? How is the fee established?

25 MR. HORTIG: The fee is established by regulation
26 at a minimum of \$100 per year, which would be the basis here.

1 for a total permanent fee of \$500; and this is currently
 2 being paid by one yacht club who applied after the establish-
 3 ment of this rate. The balance of the yacht clubs are paying
 4 a lesser fee, but that was before the last revision of rental
 5 fees by the State Lands Commission. All permanent installa-
 6 tions that have a permanent duration, as the one here, are
 7 under a permit with a fee being paid to the State Lands
 8 Commission.

9 GOV. FINCH: Well, you see the policy problem we
 10 have on that.

11 MR. KINZIE: I do see that.

12 GOV. FINCH: And I, for one, just can't see how we
 13 can take one case like this and offer a waiver unless the
 14 financial situation of the yacht club is such that \$500 is
 15 going to jeopardize their very existence, which is hard to
 16 believe. I just don't know how we could find an exception
 17 in this instance.

18 MR. KINZIE: In effect, sir, it really would not be
 19 an exception; it would be a change in attitude toward racing
 20 markers, which are of a recreational character and which don't
 21 raise any money for any yacht club.

22 MR. SMITH: Mr. Chairman, I think this raises a good
 23 question.

24 Mr. Hortig, why do we charge a fee for a buoy?
 25 What is the purpose of this?

26 MR. HORTIG: Because of the occupancy of the tide

1 and submerged lands -- because of the permanent anchors that
2 are placed on the ocean floor of the submerged lands of the
3 State of California. So, therefore, there is an actual occu-
4 pancy of State lands for this structure, if it can be defined
5 as such, to which racing markers are affixed.

6 MR. SMITH: What about a buoy that might be on off-
7 shore lands that might be anchored?

8 MR. HORTIG: If it is anchored and transient, there
9 is of course no fee charged; there is, of course, navigation
10 and fishery occupancy. But I might call your attention to the
11 fact that where there is a permanent mooring on State lands,
12 there is a fee.

13 GOV. FINCH: Is there any practical distinction
14 between a marker and a buoy for the purpose of a fee?

15 MR. HORTIG: Because of the anchoring, it occupies
16 a portion of the State lands that a permanent mooring for a
17 boat would occupy.

18 MR. FLOURNOY: Well, gentlemen, it would seem to me
19 where we are in a position of having an established policy of
20 a fee on mooring and buoys, that we necessarily accept the
21 staff's recommendation to reject the application for waiver
22 of fees, and we have to avoid making specific exceptions; but
23 whether or not you want to make a broader application, that
24 is up to the members of the Commission.

25 MR. SMITH: Mr. Chairman, I move to approve this;
26 but I would like to know from Mr. Hortig the amount of money

1 the State derives from such fees and I think we might want
2 to review this policy; and, in fact, we might want to know,
3 if this amount of money is small, if it is a harassment, as
4 the gentleman suggested this morning. But since it is our
5 policy, I move we reject the application.

6 MR. HORTIG: Mr. Smith -- and might I refresh the
7 memory of the members of the State Lands Commission -- the
8 entire fee policies of the State Lands Commission are under
9 review, to be reported to the Commission for consideration.

10 MR. FLOURNOY: Is there any further discussion?
11 (No response) Without objection, then, we will reject the
12 application for a waiver, in accordance with the staff's
13 recommendation on this particular item.

14 Now, let us proceed. I think, in the interest of
15 saving time and also in order not to divert attention, we
16 will move to item 10 with regard to the recommendation to the
17 Lands Commission to authorize the Attorney General to file an
18 amicus curiae brief on behalf of the Commission in defending
19 law suits with regard to the matter of valuation of taxable
20 interests that arise from drilling and operating contracts
21 and other similar instruments for the production of oil and
22 gas.

23 Mr. Hortig, do you have a report on that matter?

24 MR. HORTIG: Yes, Mr. Chairman, and to expedite the
25 proceeding of the Commission, with the approval of the Chair
26 I will read the report.

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MR. FLOURNOY: Surely.

MR. HORTIG: At the December meeting, Deputy City Attorney Kenneth K. Williams of the City of Long Beach presented a statement of the reasons why, in his opinion, the Commission should not authorize the Attorney General to file an amicus curiae brief on behalf of the Commission in pending litigation affecting the method of valuation of taxable interests arising from drilling and operating contracts similar to those involved in Long Beach tideland oil operations. This report is submitted at the request of the Commission, as an expanded statement of the bases of the Division recommendation with special attention to Mr. Williams' contentions:

1. The estimated economic impact upon the State of \$100 million resulting from application of the De Luz principle of valuation to the Long Beach contracts is substantiated by reliable data and is conservative. The City's statements concerning the possible statewide impact of the legal principle which the Commission would advocate in any amicus curiae brief are speculative and are not based upon any economic evaluation. It is the advice of the Office of the Attorney General that the outcome of the pending litigation, while not necessarily determinative of the tax treatment of the Long Beach contracts will clearly constitute a most important precedent. While the City has contended that there is no valid legal distinction between an ordinary oil and gas lease and a drilling and operating contract for ad valorem tax purposes, the fact remains

1 that a very able and conscientious trial judge after long
2 deliberation has drawn this distinction in a very elaborate
3 written decision. Thus, it cannot be said that the arguments
4 presented on behalf of the Commission would be frivolous or
5 ill-founded.

6 2. One of the duties which the City would ordinarily
7 have as trustee for the State (parenthetically, by the legis-
8 lative grant of the tide and submerged lands in trust for com-
9 merce, navigation and fisheries) is to minimize expenses of
10 oil production deductible by the oil companies, so as to in-
11 crease both the revenues going to the State and those remain-
12 ing with the City as the State's trustee. Ad valorem taxes
13 are among the most significant expenses affecting these
14 revenues. Faced with an unavoidable conflict of interest,
15 the City appears to have chosen to subordinate its obligation
16 as trustee to its interests as a collector and beneficiary of
17 local ad valorem taxes. Under these circumstances, there is
18 no entity other than the Commission in a position to protect
19 the interests of the State and of the tideland trust.

20 3. The City has suggested that the State's legal
21 position will be adequately presented by the oil companies and
22 that the Attorney General could make no substantive contribu-
23 tion in the litigation. Aside from the inherent undesirability
24 of depending upon private oil companies to defend public inter-
25 ests, such dependency would be unsatisfactory for several
26 reasons:

1 a. The oil companies have only a minor financial
2 interest in the valuation principles applicable to drilling
3 and operating contracts, as compared to the very signifi-
4 cant interest of the State. (This is now with specific
5 reference to the Long Beach contract under which THUMS
6 Long Beach Corporation is operating.) Furthermore, the
7 companies' interests greatly differ from those of the State
8 in that the companies are far more concerned with ordinary
9 oil and gas leases than drilling and operating contracts.
10 This is illustrated by the Atlantic and Humble cases, re-
11 ferred to in the calendar item, which involved 62 assess-
12 ments by the County and 22 by the City. Of these assess-
13 ments only three drilling and operating contracts were
14 involved, and all the remaining assessments covered ordinary
15 oil and gas leases. Of the \$300,000 to \$400,000 sought to
16 be recovered, only \$20,000 was attributable to such con-
17 tracts. Moreover, under net profits contracts, the larger
18 portion even of this small recovery would redound to the
19 benefit of the public landowners.

20 b. Any brief filed on behalf of the Commission
21 would seek affirmance of that portion of the decision in
22 the Los Angeles Superior Court which held that the De Luz
23 principle was inapplicable to drilling and operating con-
24 tracts. The same decision also held that this principle
25 did apply to ordinary oil and gas leases, thus making a
26 distinction between the two types of instrument. The oil

1 companies, being primarily interested in the leases, are
2 in no position to emphasize this distinction. Thus, the
3 entire thrust of the State's arguments may be expected to
4 differ from that of the oil companies.

5 4. The City has made a number of assertions as to
6 the statewide impact of a decision such as that which would be
7 sought by the Commission, and especially the impact of such a
8 decision upon local ad valorem tax revenues throughout the
9 State. The following factors would seem to indicate that this
10 impact is not likely to be nearly so great as the City fears.

11 a. The Attorney General's office has advised
12 that any brief that might be filed on behalf of the Com-
13 mission could, in their opinion, be effectively limited to
14 the valuation of taxable interests in drilling and operat-
15 ing contracts and would not affect the Court's determina-
16 tion regarding ordinary oil and gas leases.

17 b. Aside from the Long Beach tideland contracts,
18 the only presently-existing oil and gas contracts which
19 would be affected by a Court ruling such as that which
20 would be sought by the Commission are the four contracts
21 involved in the Los Angeles and Orange County litigation.
22 These latter contracts are of comparatively minor signi-
23 ficance when compared against a statewide scale.

24 c. The chances of future oil contracts being
25 drafted, or existing oil and gas leases being modified, to
26 take advantage of any ad valorem tax benefits arising from

1 drilling and operating contracts do not appear to be
2 substantial, for the following reasons:

3 (1) The greatest amount of new oil and gas
4 development on public lands in California will be
5 upon the Outer Continental Shelf; and oil develop-
6 ment upon such lands is exempted from local ad
7 valorem taxes by the Outer Continental Shelf
8 Lands Act. - (Parenthetically again, by reason
9 of the fact that these lands are now under the
10 jurisdiction of the Department of the Interior
11 of the United States Government.)

12 (2) Only a limited amount of new oil and gas
13 leasing may be anticipated upon publicly-owned
14 California uplands.

15 (3) Existing leases on public lands executed
16 prior to July 26, 1963 (or alternately, prior to
17 the effective date of the De Luz decision in 1955)
18 are expressly exempted from the De Luz rule by
19 Chapter 1684, Statutes of 1967. This exemption
20 would apply to nearly all Federal leases subject
21 to ad valorem taxes in California and (assuming
22 the applicability of the later date) most State
23 leases.

24 (4) Neither the Federal Government nor the
25 State could issue drilling and operating contracts
26 for oil and gas without drastic revisions in

1 their present leasing policies and modification
2 of existing law.

3 (5) Most local entities owning public lands
4 are the beneficiaries of local ad valorem taxes
5 and would not be motivated to tailor their leases
6 so as to minimize such taxes. This is especially
7 true of local entities having legislative tide-
8 land grants. Such entities receive the revenues
9 from leases on tidelands subject to a public
10 trust and possible legislative revocation, while
11 they receive tax revenues free from such restric-
12 tions and controls.

13 (6) Net-profits operating contracts can be
14 advantageous to the landowner where the potential
15 resource values can be estimated prior to the
16 issuance of the contract. During the entire
17 history of California tideland oil development
18 the circumstances for such evaluation have
19 occurred only at Long Beach.

20 5. Finally, as stated at the last meeting of the
21 Commission, there is no known express or implied agreement
22 between City and State representatives that the State would
23 not participate in litigation of this nature. In fact, under
24 the provisions of section 6301 of the Public Resources Code,
25 it could be argued that the Commission, as the repository of
26 all residual authority over granted tidelands, may have an

1 obligation to protect the tideland trust where the appointed
2 municipal trustee is unable to do so because of an unavoidable
3 conflict of interest.

4 In view of the foregoing, Mr. Chairman, the staff
5 again recommends that the Commission authorize the Attorney
6 General to file an amicus curiae brief or briefs on behalf of
7 the Commission in any appellate proceedings in the above-cited
8 cases insofar as they affect the method of valuation of taxable
9 interests arising from drilling and operating contracts or
10 other similar instruments for the production of oil and gas.
11 This is the recommendation that appears on page 76 of the
12 agenda before you.

13 MR. FLOURNOY: Is there someone here from Long Beach
14 that would like to be heard on this? Let me say in preface,
15 however, that we would appreciate if your comments were related
16 to new material and would not duplicate what was presented to
17 the Commission last time, and would be, more specifically, what
18 has not been said before.

19 MR. WILLIAMS: I certainly understand the Chairman's
20 desire in that respect -- and, it is true, at the Board of
21 Equalization hearing also. It is not my intention to repeat
22 the points which were made at the last hearing, because of the
23 review both by the Commission and the staff since that time and
24 we have had some conversations with Commission staff members,
25 also.

26 May I say, however, that we are disappointed -- not

1 just in the recommendation that has been made here today, but
2 the manner in which the recommendation has been made. It was
3 our stated request and hope when we presented our views last
4 time that what would result from our bringing this to your
5 attention would be a considered economic study of what the
6 true fiscal effects would be of the policy proposed and our
7 remarks would merely be something for rebuttal comment.

8 Of course, this is a complex field in which to offer
9 rebuttal on any point which is made; but, as Mr. Hortig stated,
10 certain of the points which were raised last month were specu-
11 lative and based on the economic evaluation, and this is one
12 of the things that disturbs us because we are not in a position
13 to furnish the economic evaluation. It is speculative and
14 something which should be examined by this Commission before it
15 adopts this policy.

16 We do know, of course, that a figure of \$100 million
17 does not stand as any indication as to what the end result will
18 be for the State of a policy pursued in this manner. We know
19 this because there is an obvious effect on school districts
20 alone. What does happen, then, if the \$100 million is taken
21 off local tax rolls and put through the State fiscal operation
22 is speculative. What is the end result? I am not here to tell
23 you, gentlemen. It was our feeling that this would be deter-
24 mined before the State policy was adopted.

25 It has been suggested that there may exist a feeling
26 on the part of some of the committee that because it has been

1 publicly stated that the State has a \$100 million interest in
 2 the litigation, the Commission must now resolve to take a
 3 position in this matter. Such a view I think would be a
 4 dangerous view that this issue may have on the credibility of
 5 the administration's policy regarding such important subjects
 6 as taxes and public relief.

7 Let me cite -- This goes particularly to Mr. Martin's
 8 citation of Chapter 1684. In the last session, in the closing
 9 half of the session, this bill was plucked out from the legis-
 10 lative ashcan and was given new life under the title of Senate
 11 Bill 1368. The bill granted special future tax relief to oil
 12 and gas leases by directing that all government oil leases
 13 signed prior to 1963 be reduced in assessed value by an amount
 14 of all future royalties. In other words, that they not be
 15 assessed according to the rules of the De Luz Homes case, but
 16 be specially exempted from that rule, giving them special
 17 favor over all other taxpayers.

18 Now, it would be unconstitutional for oil companies
 19 to have their taxes figured at a favorable method, because
 20 everyone is supposed to be taxed equally and everyone is sup-
 21 posed to be taxed at full value. So the legislation was
 22 called legislation for the relief of special hardships. The
 23 claimed hardships and the merits of the legislation were sub-
 24 stantially misrepresented during the course of its passage
 25 by the Legislature.

26 MR. FLOURNOY: Nobody here participated in that

1 legislation that I know of.

2 MR. WILLIAMS: When it came to the attention of the
3 administration for execution at the close of the session,
4 while the concerned public entities had not been able to get
5 going and make their view known in the tremendous melee of the
6 closing week of the Legislature, they were able to approach
7 the administration on this subject and thoroughly informed the
8 administration from competent sources, who we felt certain had
9 the respect of the administration, including requests for veto
10 from the counties of Sacramento, Sonoma, Ventura, Santa Barbara,
11 Los Angeles, Orange, Kern, and Kings County. The legislation
12 was signed, however, and this fact has been a source of sub-
13 stantial and continuing criticism.

14 I feel the action of this Commission for the
15 presently recommended policy would exacerbate a point that
16 has already been a point of substantial criticism.

17 MR. FLOURNOY: I don't mean to interrupt, but it
18 doesn't seem to me any criticism of that legislation and the
19 Governor who signed that legislation which is in the law, is
20 relevant. We must respect it as such. I don't know what this
21 has to do with this matter -- an action of the last Commission.
22 We have to accept it from the point of the law, despite the
23 fact that some people might draw the conclusion, wise or
24 unwise, that our act is connected with it.

25 MR. WILLIAMS: The only connection is that it is the
26 same subject matter, the same principle of law, the same oil

1 companies, and the same taxpayers.

2 MR. FLOURNOY: And the same State, I suppose.

3 MR. WILLIAMS: Yes. So the oil companies are seek-
4 ing in this litigation a special tax rate on their value in
5 oil leases. The effect they seek would be to tax them at a
6 standard not applicable even to their leases in private
7 properties. The points have been analyzed and presented on
8 both sides now. We feel that the State policy furthering
9 the recommended action would be to seek a dollars gain by
10 the State at a necessary loss to the ad valorem fund. In
11 order for the State to come a dollar ahead by the recommended
12 policy, they will have to destroy from local tax rates more
13 than a dollar's revenue. We think this is a self-duplicating
14 policy and in the broad view we do not feel it is the policy
15 that should be approved by this Commission.

16 MR. FLOURNOY: Any comments from members of the
17 Commission?

18 GOV. FINCH: Well, to the extent that any partisan-
19 ship involved in the action of a Democratic Legislature and
20 a Republican Governor is irrelevant, I move the recommendation
21 of the staff.

22 MR. SMITH: I second that motion, Mr. Chairman.

23 MR. FLOURNOY: Before we conclude action on that, I
24 think I do want to make a couple points perfectly clear as to
25 my understanding of the staff's recommendation.

26 In the first instance, we will be participating only

1 and exclusively insofar as it relates to drilling and operat-
2 ing contracts and without any relationship to the other things
3 involving any oil and gas leases; is that correct, Mr. Hortig?

4 MR. HORTIG: Yes, Mr. Chairman.

5 MR. FLOURNOY: And we have been advised by the
6 Attorney General's Office that it is possible to participate
7 on that basis exclusively?

8 MR. HORTIG: Yes, sir.

9 MR. FLOURNOY: Having a motion to approve the item
10 and a second, hearing no objection, the item is approved.

11 Now we will proceed to Calendar Item Number 9,
12 concerning the staff recommendation to authorize, execute
13 and deliver to Leslie Salt Company a patent confirming and
14 exchanging title to lands previously included within the
15 descriptions of prior State patents, and acceptance from
16 Leslie Salt Co. of a deed confirming in and exchanging to the
17 State title to certain lands located in the southerly portion
18 of San Francisco Bay together with a policy of title insur-
19 ance, in extended coverage form, guaranteeing the State's
20 title to those certain lands.

21 This exchange of deeds is a culmination of boundary
22 settlement and exchange authorized by Chapter 1885, Statutes
23 of 1959. State will have its title confirmed and established
24 in 1,601 acres of land valued at \$1,557,550 and will confirm
25 and establish title in the Leslie Salt Co. of 420 acres of
26 land valued at \$1,277,050 under the recommendation of the
staff.

1 **GOV. FINCH:** In terms of procedure, I think we
2 should lay some ground for the proceedings. I would like to
3 know how many people are going to be heard; there seem to be
4 some twenty people to be heard. Also, whether it is the
5 desire of the body to stay through and conclude this --
6 adjourn for lunch or stay through until we are finished. I
7 have no particular preference.

8 **MR. FLOURNOY:** It would be my estimation that since
9 this is a public meeting, not a public hearing, and that we
10 have had public hearings on this matter at which we have taken
11 extensive testimony -- and I think every member of the Commis-
12 sion has had an opportunity to review and read and consider
13 the record of that hearing which was held on January 15th in
14 Santa Clara, as well as many consultations that have been
15 undertaken throughout the Bay area with regard to this particu-
16 lar proposal in order to try and facilitate the highest degree
17 of communication with all interested parties in the area --
18 that it should not be in any way necessary to have a tremendous
19 repetition of statements that have already been made into the
20 record and which we have already had the opportunity to con-
21 sider prior to this meeting.

22 It is obviously significant if anyone is interested
23 and does have a new consideration or new aspect that they wish
24 to bring to the attention of the Commission, they should obvi-
25 ously have the opportunity to be heard and we have no intent
26 to preclude such statements. I would, however, feel that

1 under the circumstances this should not be an extensive and
2 lengthy peroration and that it would be my intention that we
3 would continue on this matter until we reach a decision by the
4 members of the Commission, regardless of the possibility of
5 infringing on the lunch hour. Unless the Commission objects,
6 that general method of procedure would be what I would intend
7 to follow.

8 How many requests have we really had, Mr. Hortig,
9 with regard to this hearing? This is a list of people, actu-
10 ally, who testified at the hearing in Santa Clara.

11 MR. HORTIG: Yes, Mr. Chairman, and by specific
12 request; and I am sure the people who attended the Santa Clara
13 hearing, the majority of whom are here today, would wish to
14 address the Commission.

15 GOV. FINCH: Can we have a show of hands of how
16 many wish to address the Commission? One, two, three, four,
17 five.

18 MR. FLOURNOY: I think that is a reasonable number
19 and we will certainly provide the opportunity.

20 Would you care briefly, Mr. Hortig, to outline the
21 aspects of the recommendation -- which I think is probably
22 fairly familiar to everyone, but we ought to have some outline

23 MR. HORTIG: May I suggest, Mr. Chairman, in order to
24 complete the records of the Commission on this matter, that
25 with your approval I would propose to read into the record the
26 last letters which have been received by the Commission and

1 by the Executive Officer on this subject subsequent to the
2 Santa Clara public hearing on January 15th -- since these
3 represent matters that would not otherwise have been brought
4 before the Commission and into the record.

5 MR. FLOURNOY: Unless there is objection, we will
6 so proceed.

7 MR. HORTIG: In chronological order of receipt, on
8 a letterhead of Bay Land Area Study Team (BLAST), dated
9 January 22, 1968, addressed to State Lands Commission:

10 "Gentlemen:

11 Because Chapter 1885 caps a hundred
12 years of land scandals and represents the
13 final attempt of State officials to confirm
14 South Bay swamped, tide and submerged lands
15 in private hands against ninety years of
16 intervening law, the Bay Land Area Study
17 Team requests:

18 1. A tabular compilation of: Original
19 Patentees, statute authorizing sale, plat
20 of survey, where recorded.

21 2. Total disclosure of appraisals and
22 assumptions proving the Leslie Slough Swap
23 is in the public interest.

24 3. Permission for members of the Bay
25 Land Area Study Team to look in W.O. 1339
26 (parenthetically, that is the work order
file of the State Lands Commission) without
its first being purged.

Very respectfully yours,

BAY LAND AREA STUDY TEAM (BLAST)
Luman C. Drake
Publicity - West Bay"

Excuse me for a moment, Mr. Chairman.

Second in order of receipt, on the letterhead of

1 Council for Governmental Responsibility, addressed to you,
2 Mr. Chairman, on January 24th:

3 "Dear Sir:

4 The appraisal report concerning this
5 matter is vital to an intelligent and
6 equitable resolution of the problem. Two
7 years ago, a copy of the appraisal report
8 was requested and was refused on the pre-
9 text that the information was confidential
10 and could not be disclosed.

11 Since that time, another appraisal
12 report has been prepared and requests for
13 copies have been met with refusal of com-
14 plete disclosure. A further request for
15 disclosure has elicited from some of your
16 staff an indication that the appraisal re-
17 port will be available for viewing by a
18 small group of citizens on the day before
19 your Commission meeting of January 26th.

20 Since the indication is that the
21 appraisal report is quite lengthy, it would
22 obviously be impractical for this small
23 group of citizens to read and carefully
24 consider the document before the Commission
25 meeting on the following day.

26 We believe that the present members of
the Commission realize the importance of
allowing the public complete information
and will, in order to rectify matters, (1)
insist that copies of the complete appraisal
report (without modifications or deletions)
be made available immediately to the public;
(2) that no decision on this matter of the
exchange and boundary settlement between
the Commission and Leslie Salt Co. be made
at the Commission meeting of Jan. 26, 1968;
and (3) that there will be no decision on
the matter by the Commission until the
public has had ample time to study the
appraisal report and make known its findings
and opinions to the Commission in public
hearings.

Yours truly,
COUNCIL FOR GOVERNMENTAL RESPONSIBILITY
Marcella Jacobson
(Mrs. Ralph N. Jacobson) "

1 Also, dated January 24th, on the letterhead of
2 the Save San Francisco Bay Association, addressed to all
3 Commissioners:

4 "Gentlemen:

5 This is with regard to the proposed
6 exchange of lands between Leslie Salt Co.
7 and the State which is on the agenda of
8 the State Lands Commission for this Friday,
9 January 26, 1968.

10 We have asked the staff of the Commis-
11 sion, personally and by letter of January
12 16, 1968, for certain information regarding
13 this exchange. We have asked to see the
14 appraisal upon which the legality of the
15 exchange depends, the details of which up
16 to now they have declined to disclose.
17 We have also asked for certain other infor-
18 mation that would be helpful to us in
19 evaluating the exchange. Members of the
20 staff are meeting with us tomorrow to dis-
21 cuss our request.

22 Because of the great importance of
23 the proposed exchange to the future of San
24 Francisco Bay and the shortness of time
25 before the commission meeting, we would
26 like to make our position clear.

We wholeheartedly support the concept
of settling boundary and other disputes
regarding Bay lands so that conservation
and development of the Bay can be facili-
tated. We recognize the legitimate rights
and needs of private landowners such as
Leslie Salt Co. We believe there is a need
in the public interest for Leslie and the
State to resolve the disputes between them,
particularly with regard to the proper
boundary lines between Leslie lands and
the navigable waterways of the Bay.

However, we strongly oppose the pro-
posed exchange in its present form. The
information revealed so far by the Commis-
sion staff indicates that there are funda-
mental defects in the proposal that make

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"It contrary to the public interest and unconstitutional. Briefly stated the defects are these:

1) The State of California is not getting value for lands it is giving up, as required by the Constitution and statutes. The exchange is a gift in part of public lands to private interests.

2) The exchange would establish a precedent that would jeopardize preservation of other navigable parts of the Bay, specifically tidelands.

3) The exchange would resolve only part of the State's legal disputes with Leslie, leaving that company free to continue to claim absolute title to contiguous lands in the Bay including the right to fill those lands.

The enclosed memorandum spells out in greater detail the legal and factual matters that lead to these conclusions.

We strongly urge the Commission to review the proposal with these defects in mind and to direct the Commission staff to modify the exchange so as to correct them. In any event we ask the Commission to make sure that the full appraisal and other information upon which the State relies be made available to the public, and that all interested parties have an opportunity to examine it carefully before the Commission makes its final decision. For a transaction of the enormous significance of this one to proceed without full public disclosure of the critical facts can only create distrust and suspicion and make later settlement of Bay problems more difficult.

Sincerely yours,

William E. Siri
President

And, finally, received later but also dated January 22, 1968, on the letterhead of the City of Mountain

1 View, City Manager Department, addressed to you, Mr. Chairman,
2 and members of the State Lands Commission:

3 "Gentlemen:

4 We have reviewed your Commission's
5 proposal to settle outstanding title and
6 boundary problems in the South Bay area.
7 We have also attended several of the excel-
8 lent public presentations conducted by
9 Mr. Hortig, your Executive Officer, and
10 his staff.

11 It is our understanding the Leslie
12 Salt Company is in agreement with the
13 proposed settlement and that the proposed
14 settlement will have public interest value
15 in that it will establish precedence from
16 which to define more clearly the public
17 interest in the Bay.

18 It is primarily for this reason that
19 we urge your favorable consideration of
20 the settlement proposal at your January 26
21 meeting.

22 Very truly yours,
23 John T. O'Halloran "
24 City Manager

25 Now, to a resume of the summary as you requested,
26 Mr. Chairman, and if I may -- From directions as a result of
the review of the legal requirements to be accomplished or to
be observed by the Commission in consideration of this matter
and of the bases for making any findings on which approval of
the proposed transaction would be based, it has been outlined
that the Commission can have fully complied with the provi-
sions of Chapter 1885 of the Statutes of 1959 provided the
Commission makes the three findings required by Chapter 1885
and authorizes the Executive Officer to accept the lands to be

1 conveyed by the Leslie Salt Co. pursuant to the proposal and
2 further authorizes the Executive Officer to execute and
3 deliver certifications and patents to Leslie Salt Co. to the
4 lands it is to receive and have confirmed according to the
5 proposal.

6 These four steps are those that are outlined in the
7 staff recommendation on page 74 of the agenda before you,
8 with authorizations to the Executive Officer to proceed --
9 the three steps being the requested findings that would have
10 to be made as a condition precedent by the State Lands Com-
11 mission. Again outlining them, after a review of the reports
12 by staff, by the Office of the Attorney General, the appraisal
13 report, the testimony for the record that you gentlemen have
14 all reviewed, in order to proceed with this transaction it
15 would be required that the Commission find:

16 First, that the subject boundary settlement and
17 exchange is necessary in order to settle and confirm the title
18 of the State and to establish the boundaries thereof;

19 Second, that the exchange is in the interest of
20 commerce, navigation, fisheries, and reclamation; and

21 Third, that the value of the interests of the State
22 in the parcels of land to be conveyed by it is no greater than
23 the value of the interests to be acquired by the State.

24 I emphasize for the information of the Commission
25 and everyone in the audience that the statutory requirement
26 is as to the equity or preponderance in favor of the State in

1 the value of these interests; that, therefore, this appraisal
2 by statute, any appraisal by statute, does not contemplate
3 the normal type of real estate appraisal solely, necessarily,
4 but the valuation of all interests and certainly the public
5 interest and the interests in reserves for commerce, naviga-
6 tion and fisheries -- which previously, with the exception
7 of the Upper Newport Bay exchange transaction which the State
8 Lands Commission approved upon recommendation by the Office
9 of the Attorney General that it could legally be taken into
10 consideration -- that transaction and the transaction before
11 you now are the first in land history in connection with ex-
12 changes that give an effective representation to the value of
13 these interests in the considerations that went into the
14 appraisal report which you have had before you and which you
15 have studied, and which result in the staff recommendation
16 that the findings are supportable and can be made by the
17 State Lands Commission.

18 MR. FLOURNOY: Well, let's proceed, then, with our
19 consideration of this matter. As indicated by the Executive
20 Officer, Mr. Hortig, there are three things that the State
21 Lands Commission obviously has to find prior to consummating
22 their approval or action on their recommendation that we
23 approve the exchange. One, that it is necessary to settle
24 and confirm title and to establish boundaries; two, that it
25 is in the interest of commerce, navigation, fisheries and
26 reclamation; and, three, that the value is at least as great

1 as that which the State receives against that which the State
2 conveys.

3 I wonder whether or not it would be expeditious to
4 try to, in terms of those people who wish to address the
5 Commission, address themselves to these three; and, particu-
6 larly, since there is one which is the primary objection or
7 comment, to isolate that. How many are there that we have?
8 Were there five?

9 MR. HORTIG: Yes. Mr. Chairman, may I interrupt?
10 Earlier I indicated that we had not had a specific request,
11 although there was this general interest and the individuals
12 raised their hands. We do have a specific request before us
13 on behalf of the Alameda Flood Control District.

14 Mr. Dombrink wishes to address the Commission.

15 MR. FLOURNOY: Then maybe we should proceed. Since
16 it is a limited number, let's hear from Mr. Dombrink and then
17 we will hear from others who indicated they wish to testify.

18 Mr. Dombrink, will you come to the microphone?

19 MR. DOMBRINK: I am Richard Dombrink. I am Chief of
20 the Real Estate Branch of the Alameda County Flood Control and
21 Water Conservation District.

22 The most northerly portion you see on the map is the
23 Alameda Creek Federal Government Flood Control Project and to
24 date the work completed is approximately in blue. In the
25 blue section there, there are two old sloughs -- which are the
26 subject of discussion here today. The map that was used in

1 1965 did not indicate the two arms presently colored in green.

2 GOV. FINCH: Where?

3 MR. DOMBRINK: (Indicating on map) That is the two
4 arms that the original map did not show, that the State was
5 going to give up the rights to. The current maps show that
6 the State is to relinquish their rights in that area.

7 The Alameda County Flood Control District has filed
8 an eminent domain proceeding for the same area. We have
9 excellent working relationship with the Leslie Salt Co. I
10 have a map here that shows the area that will be the subject
11 of condemnation. The two green arms would be in this area
12 here.

13 Now, the Flood Control District is interested in
14 the area going up to this point here and I believe the areas
15 would be very close; but I felt it incumbent to call it to the
16 Commission's attention that there is a discrepancy between the
17 two maps. The rights-of-way that the District has to purchase --
18 the State reimburses the District for the money expended. So
19 the State would be giving up the land, the Flood Control Dis-
20 trict would be buying the land, the State would be reimbursing
21 the Flood Control District; and the State could possibly lose
22 a thousand dollars if the acreage was different.

23 We are interested in having the proposed exchange
24 consummated and this is not a formal protest, but I just
25 wanted to bring it to the board's attention.

26 MR. FLOURNOY: Thank you very much.

1 MR. HORTIG: Mr. Chairman, may I respond?

2 MR. FLOURNOY: Yes.

3 MR. HORTIG: He brought it to our attention for the
4 first time, I believe, yesterday. There is a solution to the
5 problem in that other lands are being obtained in which there
6 will be State title in the general area and the staff will be
7 very happy to continue its cooperative relationships with the
8 Alameda County Flood Control District and with Leslie, to see
9 if we can't consummate an exchange for these particular lands
10 so that the entire situation can be made whole again, even
11 from Mr. Dombrink's viewpoint.

12 MR. DOMBRINK: Thank you very much.

13 MR. FLOURNOY: Thank you very much.

14 Now, let's see. Who has indicated an interest
15 and wishes to address themselves to this matter? I think
16 probably it would be easiest -- I will take this lady first --
17 if you would give your names to Mr. Hortig, so that I don't
18 have to be trying to pick people out. Those of you who have
19 a desire to speak, if you would come forward and give your
20 names to Mr. Hortig, he will give the list to me and we will
21 have a list of those people who wish to address the Commission.
22 If everyone would at this point give their name to Mr. Hortig,
23 then I will have a complete list. Has everyone come forward
24 that wishes to speak to the Commission on this matter and
25 given their name?

26 I wish you would hold up a minute, so we can

1 accomplish this process, then we will be ready to begin.

2 Do you have a complete list now, Frank?

3 MR. HORTIG: Yes.

4 MR. FLOURNOY: Will you please identify yourself and
5 the group whom you represent?

6 MRS. FREEMAN: Helen Lyons Freeman and I represent
7 the Alameda Conservation Association in Alameda. I am their
8 president.

9 I'd like to speak to the criteria that's brought up
10 in your decision awaiting today, and I notice that it is fish-
11 ing, commerce, navigation, and reclamation. We have been con-
12 cerned -- the Conservation Association has been deeply con-
13 cerned because your statute under which you are operating is
14 unconstitutional under Article 15, wherein it states that no
15 tide and submerged lands shall pass into private ownership.

16 We believe that there are tidelands that will be
17 passing into private ownership when this is consummated.
18 The paramount use of tidelands and submerged lands is in pub-
19 lic sovereignty and they are for fishing and navigation but
20 reclamation of tide and submerged lands would be no aid to them.

21 We recommend that you study this further, particu-
22 larly where it comes to the Constitution -- whether the
23 Constitution is paramount over a statute of the Legislature.

24 Thank you.

25 MR. FLOURNOY: Thank you very much.

26 GOV. FINCH: I'd like to ask Mrs. Freeman a question.

1 She is obviously very familiar with this problem for some
2 time.

3 You raised the constitutional question. Of course,
4 we have an opinion from the Attorney General's Office. Isn't
5 it true that there is an unfortunate history on this? You
6 had massive and wholesale give-away of these lands in earlier
7 years, which is the basic problem we are confronted with today.

8 MRS. FREEMAN: Well, it seems to me you can't give
9 away something that you don't have the title to; and when it
10 comes to navigable waters, they are in a sovereign capacity
11 and I doubt if you can dispose of anything like that.

12 GOV. FINCH: I am talking about what is confronting
13 us in private sales in earlier years.

14 MRS. FREEMAN: Yes. I believe I raised at an
15 earlier meeting that there was a great deal of fraud in those
16 days. There have been plenty opportunities to get quiet titles
17 to these lands. In 1913 there was legislation that anyone
18 could come forward and quiet title. The fact that they did
19 not come forward then is not our responsibility today.

20 There is no reason in our opinion to change the line
21 of ordinary tide and to change the lands behind the line of
22 ordinary tide, although you are actually discussing tidelands,
23 and it would result in 44,000 acres. I am quite sure all
24 those titles are not clear. I know from correspondence that
25 I have from the State Lands Commission that the Department of
26 Interior turned down some of their requests.

1 GOV. FINCH: By the same token, there is some
2 question of our title. There is question by the Attorney
3 General whether we have fee to those submerged lands.

4 MRS. FREEMAN: I don't think you have fee to those
5 submerged lands, but you have authority on those lands. In
6 other words, they belonged to Spain, and Spain passed them on
7 to the United States. The United States held them in trust
8 until we ceded to the Union. Then they returned the lands to
9 us; but I don't see a ruling of any kind that the State of
10 California could really tend to jeopardize the commerce
11 clause of the United States. Though the United States has
12 not entered into this issue -- it may be a little early --
13 they may be waiting to see if we can solve our own problems,
14 but I am sure they have the right to come in at any time.

15 The passing of waters to Leslie I would say could
16 not be done, regardless of the Attorney General's opinion.
17 We don't always agree; and I think it is a matter for the
18 courts to decide.

19 GOV. FINCH: I think it is clear that there is going
20 to be ultimate litigation involved here in any event, and I
21 think it will probably hasten that litigation if we act,
22 rather than if we fail to act. Would you concede that?

23 MRS. FREEMAN: No, I don't think so -- because ~~this~~
24 has been going on, as I understand it, for twenty years.
25 Any day the State decides to say to Leslie Salt: "Now, Leslie
26 you claim ownership to these lands. Bring in your proof of

1 ownership because it so happens we have a different ...

2 GOV. FINCH: I think that same dialogue has been
3 going on for twenty years.

4 MRS. FREEMAN: That is true; but if the State of
5 California says, "Get off and get out," that would be manda-
6 tory until they went to court and sued you -- and I don't
7 think they have a leg to stand on and I think this is an
8 outright gift to private ownership. And as one person said:
9 "You don't save the Bay by giving it away."

10 GOV. FINCH: Thank you.

11 MR. FLOURNOY: I would like to make one comment.
12 The prior administration referred to was a long, long time ago.

13 MRS. FREEMAN: I can't let that go. That's true.
14 This happened a long, long time ago; but, if you will look
15 back in the statutes, I think as recently as 1959 Governor
16 Brown issued a patent to Ideal Cement Company and those lands
17 were not high, dry ground.

18 MR. FLOURNOY: That is not involved in our con-
19 sideration here today.

20 MRS. FREEMAN: It will be.

21 MR. FLOURNOY: Let's proceed with Mr. Butler, if we
22 may. Mr. Louis Butler.

23 MR. SIRI: Mr. Chairman, may I proceed for Mr. Butler?
24 My name is William Siri, representing the Save the San
25 Francisco Bay Association as its president -- an organization
26 of about 11,000 members primarily in the Bay area.

1 Our position was explained to you in the letter
2 that was read to you this morning by Mr. Hortig and presents
3 in general terms our position as of two days ago.

4 In general, I would point out to you that it is not
5 our object to disclaim the Leslie Salt valid claims to title
6 to lands in the Bay area or to deny them title. This is not
7 our intention at all. We recognize that Leslie Salt and other
8 private owners do have valid claims and that these must be
9 resolved. We are eager, as any citizens' group, to see these
10 problems resolved so they will reflect the State's and the
11 public's interest.

12 The negotiations have been going on for twenty years
13 now, but they have taken a somewhat different form very recent-
14 ly; only as recently as yesterday did our organization have an
15 opportunity to discuss in detail the nature of the exchange
16 with the Commission staff. Some hours of discussion, in
17 which your staff was most cooperative in answering questions
18 and discussing the details and the methods by which the settle-
19 ment was arrived at, were helpful; but, in turn, raised other
20 questions and did not wholly answer some of the earlier ques-
21 tions that we still have in our minds.

22 At the present time it is our feeling that we can-
23 not agree with the present proposal until there is further
24 clarification. We have certain reservations about the pro-
25 posed exchange and we would not be able to support it until we
26 had had an opportunity to examine further some of the underlying

1 procedures that were used in arriving at the proposed
2 exchange. Rather than go into detail here, I'd like to
3 ask your permission to call on Mr. Butler, a member of our
4 organization, who is extremely knowledgeable on these points,
5 to present to you the reason for our reservations and what we
6 believe ought to be the nature of the procedure thereon.

7 GOV. FINCH: Could I ask one question?

8 MR. SIRI: Yes.

9 GOV. FINCH: As I understand it, are you satisfied
10 that under the plan as proposed there is no shrinkage of the
11 Bay?

12 MR. SIRI: No; on this question we are not yet
13 certain.

14 GOV. FINCH: You mean in terms of future develop-
15 ment or in terms of immediate title vesting?

16 MR. SIRI: In both -- in terms as regards to future
17 development and to the present boundaries of the lands
18 included.

19 GOV. FINCH: Are you also a member of BCDC or
20 active with it?

21 MR. SIRI: No.

22 GOV. FINCH: Do you have any information as to
23 whether or not they have taken a position in this matter or
24 not taken a position?

25 MR. SIRI: I don't know what BCDC's position is on
26 this.

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MR. FLOURNOY: Thank you, Mr. Siri.

MR. BUTLER: Mr. Chairman, members of the Commission, I'd like, if I could, just take a short time here to go over the matters that we have been discussing since the public hearings and meeting particularly yesterday afternoon with members of the Lands Commission staff -- which, as Mr. Siri says, have helped to clarify the nature of the exchange and unfortunately have raised additional questions in our minds as to its validity.

First, I'd like to bring out some facts that have appeared since those public hearings, as to which we had doubts before. If I may, I think I'll go to the map and perhaps you can still hear me. In the description of the exchange and in the map and in the coloring, it is described as involving some 400 acres going to Leslie and 600, or 1600 depending upon what you are talking about, going to the State.

I think we ought to understand that, in fact, -- and I hope the Lands staff will correct me if I am wrong, but I don't think I am -- that, in fact, as a result of this proposed exchange some 30,000-plus acres of Leslie Salt land in this end of the Bay -- that there will be a deed or patent from the State that affects some 36,000 acres of land.

Now, I don't want to go into details now as to what will be in the deed. There has been a discussion between ourselves and the Lands Commission staff whether that is the proper thing and whether the terms are proper. I think for

1 the moment we have just got to remember the fact that 36,000 --
2 that is not the exact number; certainly 30,000 acres -- is
3 involved in this arrangement.

4 There is a second fact which I think is very perti-
5 nent because of the arguments made by the Lands Commission
6 staff at the public hearing; and I think that everyone should
7 understand that while these have been public hearings in the
8 sense that people have had an opportunity to present their
9 views, they have not been hearings before the members of this
10 Commission or others who are in the position of making the
11 decision. The hearings have been before the men who have
12 been involved in the negotiations with Leslie Salt Company
13 and in this connection I think they have acquired a certain
14 adversary nature, rather than, in fact, an exposition of the
15 public concern.

16 At any rate, in the public hearing the argument has
17 been made that the ultimate long benefit of this exchange
18 will be to resolve difficult legal disputes between Leslie
19 Salt Company and the State of California, some of which mem-
20 bers of the Commission have referred to as arising over ques-
21 tions as to the nature of swamp and overflowed patents, what
22 they conveyed, and so on.

23 Again, without descending into that somewhat complex
24 legal argument, I would point out two things: One, this green
25 line here outlines the lands involved in this transaction that
26 is proposed -- that is, everything on this side of it and on

1 this side of it. This leaves the Leslie Salt Company with
2 lands, extensive lands, just in this area of the Bay as to
3 which there are very basic legal disputes. Specifically, it
4 leaves them with lands -- and these are apparently something
5 under 600 acres -- that they acquired under the same patents
6 that are involved in the lands behind the green line. It
7 also leaves the Leslie Salt Company and the State in dispute
8 as to fourteen hundred acres of land that lie in here under a
9 patent; and, perhaps more significantly, although fourteen
10 hundred acres of Bay lands is not insignificant, the area is
11 colored blue on this map -- the implication being somewhat
12 that they are involved in the transaction. In fact, they are
13 not involved in the transaction at all. What it says is:
14 "Channels or basins open to the Bay as to which navigational
15 servitude will not be affected by this transaction." What
16 that means, translated, is that the Leslie Salt Company and
17 the State have the same disputes, although somewhat modified.
18 How these channels got there, amazes me; but Leslie and the
19 State have the same disputes or will have, after this exchange
20 goes through, have the same disputes that they have over every-
21 thing else over here. So they really haven't resolved these
22 blue channels.

23 As a matter of fact, the State's position with
24 regard to some of these channels is not as good as it is with
25 regard to the natural waterways. Leslie might, and for all
26 we know perhaps does, claim the right to block off these

1 channels. Since they opened them up, some of them, they
2 possibly could claim the right to close them under the
3 doctrine that has developed now on the Delta.

4 So, since the State says the servitude will not
5 be affected, those facts still remain. So even if this
6 exchange of thousands of acres goes through, we have not
7 settled very seriously the disputes of the Leslie Salt
8 Company.

9 Now, I'd like to go....

10 MR. SMITH: Mr. Butler, before you go on, I am
11 interested in what organization you represent.

12 MR. BUTLER: I am with the ~~Save the Bay Association~~.
13 I think Mr. Siri made that point.

14 Now, with regards to the appraisal -- and perhaps a
15 little history would be helpful here -- first off, the full
16 appraisal has never been made available to the public. This
17 appraisal was made by a member of the State Lands Division
18 staff, a gentleman who, I gather, is not available at the
19 present time. He is in the Chocolate Mountains, we were told
20 last night. So, regardless of his whereabouts, the fact is
21 that none of us had a chance to talk to the State's appraiser,
22 nor have we received anything but the bare summary of his
23 findings.

24 Now, I'll come back to that in a minute, but I
25 think we have to remember that this is not just sort of an
26 incidental part of this dispute -- that is, the appraisal.

1 As Mr. Hortig pointed out -- and I think the
2 Chairman said we might confine ourselves to the three points
3 mentioned -- one of those is, in fact, is the State getting
4 equal or more than it is giving up; and the way to determine
5 that is to make an appraisal of the lands. The current
6 appraisal was made as of December 1, 1967. The previous
7 appraisal upon which the State relied -- we have asked for a
8 copy of and have never received. When this matter became
9 quiet in 1966, that appraisal apparently was shelved and now
10 they are apparently trying to use another one to justify the
11 exchange.

12 Now, the current appraisal -- which, as I say, we
13 have not seen the details, but Mr. Taylor and Mr. Hortig were
14 kind enough to discuss with us yesterday and the process by
15 which it was prepared. I'd like to point out a couple things
16 about that appraisal. Perhaps I should wait for Mr. Smith.

17 MR. SMITH: I am just a little curious. Where are
18 the Chocolate Mountains?

19 MR. BUTLER: Near the Big Rock Candy Mountain.

20 MR. HORTIG: In Imperial County. It is a Naval and
21 Marine Corps bombing range.

22 MR. BUTLER: I assume the appraiser is in no danger.

23 MR. HORTIG: We are happy to report that he got out
24 just in time. He was supposed to report night before last and
25 yesterday morning Navy search and rescue teams were looking
26 for him. They found him.

1 MR. BUTLER: If I could ask the members of the
2 Commission to turn to the page of your summary on values,
3 that show the relative values that the State is receiving
4 and giving up ...

5 GOV. FINCH: This is Exhibit C?

6 MR. BUTLER: That's right. We might start on
7 Exhibit C, page 1. It says: "Lands to be conveyed by Leslie
8 to the State pursuant to the exchange agreement..." Let me
9 set aside for the moment how these values were arrived at and
10 just take the numbers. That shows a figure of \$1,035,000.
11 Now, you will notice there is a \$400 million figure down below
12 that, but it's apparently there just for information. It's
13 not put into the ultimate addition. So \$1,035,000 is the
14 value of certain tidelands that the State is getting from
15 Leslie, according to the appraisal system.

16 Now, may I ask you to turn to the next page, page 2.
17 These are lands to be conveyed by the State to Leslie pursuant
18 to the exchange, and if you will look at that figure it is
19 \$1,277,000. So if you set those two pages so you can see
20 them together, you will see at the moment, if you were to stop
21 right there, the State is coming out about \$240,000 short on
22 this exchange -- which is, when a public agency is doing busi-
23 ness, not just a bad deal; it is unconstitutional and a deal
24 that violates the statute.

25 So how does the appraisal get up to the point it is
26 in the black? That takes you to the last two items on page 1.

1 We have now disposed of the interests in the lands and we are
2 going into less tangible values to the State. The first one
3 is \$272,000. Now, as explained to us recently by the Lands
4 Division staff, that represents litigation costs, money that
5 the State would have to pay to quiet title to some submerged
6 lands. The claim is they won't have to pay the costs now,
7 therefore that adds \$272,000 to the deal.

8 Well, apart from the enormous difficulty in estimat-
9 ing legal costs, obviously as a very basic principle there is
10 nothing in the appraisal that shows the benefits for Leslie
11 for its avoiding legal costs. So here is an item that appears
12 on the State's side of the ledger, but not on the Leslie side.
13 I would point out right there that even if that item is per-
14 mitted in a deal that involves over \$2 million in land title,
15 that item lies on either side. The State thereby edges into
16 the black by \$30,000; and, keeping in mind the very difficult
17 nature of appraisals, it is not a science and certainly esti-
18 mating litigation costs is not a science -- but, in any event,
19 through this procedure the appraiser of the Lands Division
20 staff has edged the State into the black by \$30,000.

21 Then you get to the last item -- value of waterways
22 of public benefit, and that's about \$250,000; and if I go back
23 to the map, that is a value in these blue areas. Now, as hard
24 as we have tried, I have to confess we do not understand how
25 the State is getting anything of value in these blue areas.
26 I am willing to listen to more argument on it, but it seems

1 inconceivable when it says, "Navigational servitude will not
2 be affected by transaction" how the State doesn't come out
3 just where it is now. But somehow or another the appraiser
4 claims that that adds \$250,000 in value and thereby he makes
5 the proposed transaction to the favor of the State of Cali-
6 fornia. So even if we are to accept the method of appraisal
7 the figures which the appraiser used, which we have never
8 seen -- if we were to take in faith everything that has been
9 told to us, the arrangement is unconstitutional because there
10 are these \$500,000 in benefits in the proposal which, in fact,
11 do not exist.

12 Let me go beyond that to what we understand the
13 appraiser did even to get up to what he did, \$1 million worth
14 of lands going to the State. And at the risk of going into
15 repetition, all we know is what we have been told by members
16 of the Division staff. We have never seen the papers. It
17 has gotten to the position, as I said yesterday -- unfortun-
18 ately, it has gotten to the position of an adversary proceed-
19 ing. We thought it was the public interest and the State,
20 but it has gotten to be an adversary proceeding. I understand
21 this when it is one citizen against another, but when it is
22 for the benefit of the State, I don't understand it.

23 Here is this slough here, which we discussed yester-
24 day, that is a navigable waterway. It can be dredged by any-
25 body interested in navigation -- the Federal government, the
26 Corps of Engineers the State, and so on. Now, the State

1 claims, and we agree, that they own the center submerged part
2 of that slough. We are not discussing that. There are mud
3 edges to these sloughs and the contention is that Leslie has
4 the mud, which is under water at high tide, and the State has
5 the water; that is, the people have the water.

6 Now, what Leslie is giving up -- and that's where
7 the whole million dollars comes from -- are these tidelands,
8 the mud; and the question is: How much is it worth if you
9 own something that is under water at high tide and somebody
10 can dredge it? You can't use it without permits. In fact,
11 you may not be able to use it at all if the State says that
12 it is vital to navigation. The uses that you can have, if
13 you get a permit, are perhaps to put a pier on it, and so on.

14 Now somehow, by a system that we do not understand,
15 the appraiser says that that underlying land -- let's say if
16 in a piece altogether would be worth \$10,000 an acre -- that
17 that underlying land is worth an average of about sixty-five
18 hundred dollars, even though it has all these problems we have
19 described, and that being able to navigate over the top of it
20 is only worth thirty-five hundred. Our contention is that
21 now we understand the system, we would like to get appraisal
22 information to support it. Our contention is that is contrary
23 to all common sense -- that nobody is going to pay sixty-five
24 hundred dollars for an acre of land under water at high tide,
25 that the State or Federal government can dredge any time it
26 wants, and subject to whether you can get a permit, and so on.

1 So, in our view, the million dollars going to the
2 State may come out to mean something more like \$200,000 or
3 \$300,000 -- but, again, we need to see the appraisal. We
4 have not been told of any comparable sales. And to show you
5 what can happen, we discovered yesterday that in this particu-
6 lar slough -- take my piece over here; in fact, it was ap-
7 praised on this bank at thirty-five hundred dollars. They
8 said Leslie had twenty-five hundred dollars worth of mud, if
9 you will, and the State had a thousand dollars worth of water.
10 Directly across the way the land was appraised at twenty-five
11 hundred, which I think might be legitimate because there are
12 differences in the two locations. Over here, the mud was
13 worth fifteen hundred and the water, the easement, was worth
14 a thousand. So, in effect, on both sides, both little tidal
15 banks here, the State's interest was worth a thousand dollars
16 even though on one side Leslie's mud went up in value. There
17 is no relation between the two. It sounds almost impossible
18 to me that that could be the case in market value.

19 So what seems clear is that the appraiser arbitrarily
20 picked a thousand dollars as the value of the navigational
21 easement, regardless of what the land was worth, and through
22 that arbitrary system finally came up to this million dollars;
23 and finally boosted it up to where the transaction was consti-
24 tutional. This is complicated and I'll stop right there, with
25 what is obviously a difficult question, except to say this --
26 and it takes a little history. We have to keep in mind that

1 this transaction was proposed in 1966, when there were other
2 members on this Commission. At that time Leslie was receiv-
3 ing more acres than are presently involved. Objections
4 made and litigation was discussed, and the matter was then
5 dropped for renegotiation with the Leslie Salt Company -- at
6 which time areas that are presently navigable, giving that
7 water to Leslie in fact, were pulled out of the deal and a
8 whole new arrangement was proposed.

9 I would like to be corrected if I am wrong about
10 this, but my understanding of the sequence of time was this:
11 that negotiations were carried on with the Leslie Salt Company,
12 arrangements on all land on that map were completed, and then
13 the appraiser was told to go out and see how this would come
14 out, with that map in mind.

15 Please keep in mind the appraiser is a member of
16 the State Lands Division staff and he went off to do his job.
17 I would say a man would be less than human if his employers
18 sent him out to do a job and he would come back without trying
19 to come back with an appraisal that would fit his employer's
20 arrangement.

21 MR. SMITH: Just a moment. I'd like you to explain
22 that remark you just made, giving the impression that an
23 appraiser went out and came back with a report that his
24 employer wanted.

25 MR. BUTLER: I say the appraiser...

26 MR. SMITH: I don't want any insinuations, Mr. Butler.

1 that you can't back up.

2 MR. BUTLER: I can't back it up.

3 MR. SMITH: Then I don't think it should be made.

4 GOV. FINCH: For the record, is this appraiser an
5 employee of the Lands Commission or is he an independent
6 contractor?

7 MR. HORTIG: This appraiser and the lands appraisal
8 Mr. Butler discussed was made by an employee of the State
9 Lands Division. I think we should bring to the attention of
10 the Commission for the record -- this appraisal was predicated
11 on the most conservative approach to see if there was a value
12 for the State and the conservative values have already been
13 pointed out by Mr. Butler. There was a prior fee appraisal
14 made by a member of the Appraisal Institute, made jointly for
15 the Leslie Salt Company and the State, which showed values in
16 favor of the State in preponderance of \$2 million.

17 GOV. FINCH: Was this in connection with this
18 transaction in 1966?

19 MR. HORTIG: In 1966; but generally, the magnitude
20 of the shifts and changes that have been involved were such
21 that the appraiser that made the previous appraisal would
22 still stand by it.

23 MR. BUTLER: Let me make it clear I certainly didn't
24 mean to insinuate anything about the integrity of this indi-
25 vidual. If there was any such suggestion, I withdraw any
26 insinuation. All I wanted to point out was the nature of his

1 employment.

2 MR. HORTIG: Mr. Chairman, might I just to complete
3 the record - -

4 Mr. Butler, this is one point I think we can
5 clarify and that is that the staff appraiser who was asso-
6 ciated with the project and with the negotiations from the
7 onset of the negotiations that resulted in this present
8 proposal was not handed a fait accompli.

9 MR. BUTLER: That's why I asked at the beginning what
10 the timing was. Did he make his appraisal of the values first
11 and was the transaction derived from that, or did it go the
12 other way around?

13 MR. HORTIG: The appraisal of the State Lands Divi-
14 sion was started in 1966.

15 MR. BUTLER: Did he complete his appraisal, for
16 example, before that map was prepared?

17 MR. HORTIG: No, sir, but he was advising us to
18 values in connection with the negotiation. Since it is a
19 proposed negotiated settlement, patently other negotiations
20 could well have been necessary if it were not possible to
21 accomplish the balance at the conclusion of the negotiations.

22 MR. BUTLER: I think this kind of illustrates the
23 sort of misunderstanding that can arise with regard to such
24 things, but let us make this point clear. You know, this is
25 the kind of argument you get into over a proposal that no one
26 has ever seen, with an appraiser that no one has talked to.

1 So I am not anxious to take the Commission's time to debate
2 a document that no one has examined, other than to talk of the
3 results.

4 MR. SMITH: I'd like to ask the Attorney General's
5 opinion on comparable sales — when they affect the State and
6 particular parties, whether or not these are to be held in
7 confidence or to be released to the public.

8 MR. SHAVELSON: Where, as in this case, data was
9 submitted by members of the public on the understanding that
10 it would be kept confidential, it would be my opinion that
11 under the Government Code provisions the disclosure of that
12 information would be against the public interest and it may be
13 kept confidential. In other words, these people disclosed
14 comparable sales only on condition that they be kept confiden-
15 tial and I believe under those circumstances they may be kept
16 confidential.

17 MR. SMITH: I think the same thing is true when we
18 condemn property by the State for right-of-way or certain
19 universities, when a proposal is made on a piece of property.

20 MR. TAYLOR: Mr. Smith, when we acquire property for
21 the State, our appraisals are not public knowledge until the
22 matter goes into court; and it is our policy to receive pro-
23 tective orders that we do not disclose our appraisals until we
24 have like appraisals from someone else. We would like to see
25 the art of the other side before we disclose our side in a
26 condemnation.

1 MR. SMITH: That was my understanding, sitting as
2 Chairman of the Public Works Board, where we purchase a great
3 deal of property for universities and such -- that the value
4 of property is kept confidential until it goes to litigation.

5 MR. BUTLER: I think that is correct; but I would
6 like to point out this is an entirely different procedure.
7 The statute requires that State lands cannot be conveyed until
8 you have a public hearing and a finding by the Commission that
9 the State is getting equal value. How that public determina-
10 tion can be made without public knowledge of the underlying
11 documents....

12 MR. SMITH: It is my understanding, Mr. Butler,
13 that an appraisal has been made. Insofar as this Commission
14 is concerned, it is valid; and the same course would follow
15 here if litigation follows -- the same way if we purchased
16 property for other purposes in the State.

17 MR. BUTLER: I guess I disagree with you.

18 MR. SMITH: I happen to agree with the Attorney
19 General.

20 MR. BUTLER: I think the Attorney General was talk-
21 ing about condemnation; but let me say this -- You will recall
22 that I said without even going into what we think is the
23 doubtful nature of the appraisal, it shows on its face that
24 the State comes out \$240,000 short in land, and then you have
25 the question as to whether these other values are legitimate.

26 Perhaps just by the nature of my comments and

1 discussion here, you have the feeling that we are in an
2 adversary position; and while some may have difficulty believ-
3 ing it, our view is we are not. I think our goal is simply
4 this: To have a very careful study made by those who are
5 responsible for this decision of the details of this trans-
6 action, so that a transaction can be developed which, in fact:
7 will accomplish what I think the State's objectives, the Land
8 Division's objectives, and the public's objectives are. That
9 would be to protect the Bay, to resolve all the outstanding
10 legal disputes with the Leslie Salt Company, to arrive at
11 appraisal figures that are not going to create suspicion and
12 doubt but can be accepted by the public; and in that way to
13 have Leslie and the citizens and everyone else proceed with
14 the protection and development of this area.

15 Specifically, what I think we would have in mind is
16 this: First, we would ask that the Commission not approve the
17 transaction in this form, and I would hope it would be pre-
18 pared to do that. If it is not, we would ask that it take
19 time to have the transaction looked into other than by the
20 Lands Division staff, which understandably is committed to it
21 because they have borne the very difficult burden of this
22 negotiation for years and years and under different guidelines
23 with different administrations, and so on; to bring in others
24 with the citizens' groups that would like to present appraisal
25 information.

26 We think it would be helpful to invite the Bay

1 Conservation and Development Commission staff. - You may not
2 want to become involved with the commission because of the
3 delays, and we are not interested in delays; but the staff of
4 the Bay Conservation and Development Commission has extensive
5 information and background on this problem -- to invite them
6 as friends of this Commission to examine the things, for
7 example, I have said here today, to see that they are justi-
8 fied or if we have somehow misunderstood the facts, that they
9 be corrected. But our view is unless this is done, this kind
10 of transaction if approved would really create public misunder-
11 standing of a sort which would not be in the public interest
12 or anyone else's.

13 I am sorry to have taken so much time.

14 GOV. FINCH: Mr. Butler, as a lawyer and conceding
15 the desirability of wrapping up the whole package as soon as
16 possible, do you agree with the contention of the staff that
17 the package embraces the more difficult, the more complex,
18 legal problems than the center of the Bay? Aren't we talking
19 of apples and oranges?

20 MR. BUTLER: I don't think so. There are some
21 additional complexities because these are swamp and overflowed
22 patents and most of the Bay lands are under tidelands patents.
23 Mr. Taylor has made that point. The law is less clear because
24 it has not been litigated in the State on swamp and overflow
25 patents. On the other hand, there are swamp and overflow
26 patents that are not in this transaction, so ultimate

1 litigation could still involve the same complex problems that
2 are involved down here.

3 There is another consideration. I do not know
4 whether it is really in the long-range interest of the State
5 to speculate that it may have a bad legal case. I don't
6 think the State does. To me, it may be more important to
7 resolve what the rights are on swamp and overflowed patents
8 than it is to try to settle the issue as a boundary issue --
9 because there are swamp and overflowed patents in the Delta,
10 in the North Bay, I am not familiar with. All I am going to
11 say -- These complex legal issues are probably going to have
12 to be answered some day.

13 GOV. FINCH: What about the point we have a whole
14 series of large landowners around the Bay? Presumably many of
15 those questions will be raised in that litigation. Leslie
16 was at least willing to negotiate; and, in terms of the overall
17 question of the Bay, is there anything to be said for an
18 accommodation here which might then make it easier to solve
19 the long-term development than litigation, which is going to
20 establish impossible pressures for a long period of time?

21 MR. BUTLER: Mr. Taylor has made this point. I
22 think this is what has so convinced him of the need to go
23 ahead with the transaction even though it may not be particu-
24 larly advantageous in these terms. I and others of our group
25 have difficulty understanding this benefit. There is no
26 legal precedent set by the fact that you settle one boundary

1 dispute and leave others. The practical precedent, the
2 argument made -- "Well, these sloughs are confirmed to the
3 State and you can't have a slough without having it connected
4 to the Bay; therefore, you have a stronger case in the Bay."
5 To me, that kind of practical precedent is not of very much
6 value. For example, suppose there is any litigation over the
7 Bay itself. It is very difficult for me to conceive, for any
8 reason -- legal or other reason -- that the owners of these
9 lands out here would want to cut off these sloughs if they
10 could. So the access up here is going to exist, whether this
11 settlement goes through or not.

12 So, to answer your question, Governor Finch, we
13 have not been able to see the benefit, no.

14 Thank you very much.

15 MR. FLOURNOY: Thank you very much. I would just
16 make one comment with regard to your exploratory one on the
17 appraisal information. I think we are on the horns of a
18 dilemma -- that had we not kept back all confidential informa-
19 tion, we would have been subject to criticism; and now we are
20 under criticism for not making it public. We are criticized
21 either way -- we are on the horns of a dilemma.

22 MR. BUTLER: Perhaps it would be solved by going
23 back to the people who released the information and explaining
24 the matter to them; and under a procedure under which they and
25 the members of the Commission would be satisfied, that matter
26 could be looked into. I would think the individual members

1 of the Commission would want to know more about the appraisal
2 and how it was made.

3 MR. FLOURNOY: I think that, with the exception of
4 Mr. Cooper, was our last individual ...

5 MR. HORTIG: Mr. Chairman, another gentleman has
6 just risen.

7 MR. JACKSON: Gentlemen of the Commission, I am
8 Harry Jackson, the Secretary of Leslie Salt Company, and I
9 think it is incumbent upon me to correct certain statements
10 Mr. Butler made for the record.

11 I think our position has been stated abundantly and
12 clearly by Mr. Schilling in the Santa Clara City Hall, in the
13 hearing held there on the 15th of January in the evening.
14 However, in view of the fact Mr. Butler has made certain
15 statements here which might be misleading, I ask your indul-
16 gence to address myself to those.

17 First, with respect to the appraisal, I want the
18 record to show that Leslie Salt Company had its appraisal made
19 some years ago on a fee basis, fee ownership basis -- because
20 that is what this statute contemplates when the transaction is
21 concluded, if the exchange is approved, the lands are exchanged;
22 and what the State receives is fee title which has been vested
23 in Leslie Salt Company since 1936; and its predecessors in
24 title have held this patent by the 1872 Curative Act, paid
25 for them as any bona fide purchaser, and paid taxes and assess-
26 ments on them; and they are so indicated on assessment maps in

1 all three counties. Now, what Leslie Salt is guaranteeing is
2 fee title.

3 For the purposes of your State appraisal, I give
4 great credit to your staff for being hard bargainers. They
5 insisted on specifying this on their theory of sovereign
6 ownership, their theory of legal ownership -- not our theory
7 that we felt could be substantiated in the courts; but we
8 agreed to making their appraisal on their theory, and possibly
9 a fallacious theory, to satisfy themselves that the State was,
10 in fact, receiving equal value.

11 Now, when you give instructions to an appraiser and
12 those instructions embrace legal concepts and assumptions
13 which are not tested and not proven and not established either
14 by statute, constitutionally, or by stare decisis, and you
15 accept an appraisal based on those legal theories -- which we
16 have been willing to do in this matter -- it does not follow
17 that values based upon those theories are the true values.
18 We still stand by the fee appraisal, which showed our lands
19 to be three to one to the State. I think that's in the record,
20 and you have ample basis to make a finding.

21 This is always a difficult point in any settlement
22 situation because each side is conceding the validity of each
23 other's legal argument. We are not conceding the State's
24 legal argument except for the point of compromise. That's
25 why the law erects barriers on compromise leading to settle-
26 ment; that is, none of the admissions made in a negotiation

1 are acceptable in a court proceeding. It is also a good
2 policy; it is also desirable in our opinion to open up these
3 waterways and establish State ownership there.

4 Finally, I want to point out what Mr. Butler is
5 saying here, shorn of all the elaborate syllogisms and elabo-
6 rate explanations, what he is saying is that his group, Save
7 San Francisco Bay Association -- a group before whom I spoke
8 some three weeks ago and presented in the most possible de-
9 tail the nature of this transaction at my request, not theirs --
10 that that group and other citizens' groups, however they may
11 be defined, are the guardians of the public interest - -
12 not you nor the Commission, not the public officers we have
13 voted in. We elected you to turn over to you the questions of
14 public interest and voluntary citizens' groups fly in the
15 face of that.

16 Thank you.

17 MR. FLOURNOY: Is Mr. Cooper still here? Will you
18 identify yourself?

19 MR. COOPER: Thank you, gentlemen. My name is
20 Walter Cooper and I reside in Foster City.

21 First off, I'd like to state that my comments are
22 limited specifically to the boundaries of the Esero Municipal
23 Improvement District, which lie in this area right here, and
24 the reference in my discussion will be to this body of water
25 here, known as Seal Creek, and it is approximately 100 acres.

26 My statement is in the form of a letter that I have

1 addressed to this Commission; but I don't think you have
2 received it yet, as I mailed it late last night, and I will
3 read the letter.

4 "State Lands Commission:

5 The presentation the Lands Division
6 staff and the Attorney General's office
7 have made on behalf of the Leslie Salt
8 Company concerning the Leslie Slough Swap
9 is difficult to believe. What I want to
10 know is, who is working in behalf of the
11 people of California? Isn't public office
12 a trust of some sort, with public officials
13 acting not as owners but as trustees of
14 the common wealth and the common good?
15 How can public officials give lands away
16 they don't own, give funds away that aren't
17 theirs, and incur public debts they don't
18 pay?

19 When Leslie Salt Company, Schilling Estates
20 Company, T. Jack Foster, Senator Dolwig,
21 Ernie Wilson and Bert Leavit went into
22 the real estate business in San Francisco
23 Bay in 1960, Leslie required that Foster
24 get the lands filled four feet deep to
25 meet FHA requirements for homebuilding
26 with public funds of the Estero District
before Leslie would release the lands to
Foster for resale. The total cost of
filling Foster City will run in the
neighborhood of \$39 million for 2600
acres, or about \$15,000 an acre. This
is public money spent for private profit
under the Estero Act setup.

Foster City used to be called Brewer
Island. The body of navigable water that
made it an island was called Seal Creek
and later Angelo Slough. In 1960
T. Jack Foster dewatered this creek en-
tirely and filled it with public moneys
of the Estero Municipal Improvement Dis-
trict, which he still runs and controls.
The Leslie Salt Company couldn't have
sold Foster these 100 acres of sloughs
if it wanted to, because it didn't own
them. Now, in 1968, the State Lands

1 "Commission wants to donate these lands
2 to Leslie so it can release them to Foster
3 to build on, in order to make the best of
4 a fraudulent situation.

5 A State Lands Division memo dated
6 December 8, 1966 stated that the fee value
7 of all the lands being given to Leslie
8 (460 acres then) was \$1,170,200. And
9 that the fee value of the 1550 acres of
10 sloughs being returned to the people of
11 California was \$2,869,350. On January 15,
12 1968 the State said orally in a public
13 hearing in Santa Clara that the average
14 value of the public easement for commerce,
15 navigation and fisheries in San Mateo
16 County was \$1,380 an acre, in Santa Clara
17 County \$660 an acre, and in Alameda County
18 \$770 an acre.

19 In my opinion these figures are phony
20 and even ridiculous. The 100 acres of
21 Seal Creek the Commission now proposes to
22 give to Leslie in Foster City is now
23 assessed at \$4 millions alone. Your Mr.
24 N. G. Taylor, Deputy AG, has acknowledged
25 the sovereignty of Seal Creek and pointed
26 to Chapter 1885, Stats. of 1959 as his
political instructions to get rid of it.

Gentlemen, the Leslie Slough Swap
is an outright fraud on the people of
California who can tell me when they
see it, by now. San Francisco Bay is
irreplaceable. None of it should be given
away. Public land is public land. You
are its trustees and should be its con-
servators.

Very respectfully yours,

Walter Cooper

Gentlemen, I'd also like to point out that in
addition to the 100 acres of Seal Creek originally in the
early maps, both the Federal and San Mateo County official
maps show that this original waterway that made Brewer Island

1 an island actually came from this boot area at this point,
2 came to this point and then intersected Seal Creek. However,
3 now and for the last forty, perhaps fifty, years Seal Slough --
4 which now opens at this point -- has been dredged periodically
5 and we have now completely lost by filling one of these earlier
6 creeks, which was also a navigable waterway, and up until 1960
7 this boot area was approximately eighteen acres that was
8 omitted specifically from the original Estero Act as being
9 property owned by Ideal Cement.

10 However, to go back in the records, you will find
11 that this was also sovereign land and was an easement, to go
12 back to its early history, and also this slough here goes
13 back a hundred years; but I do not have documents. This, we
14 have proven records on and we can trace it back to 1850 and
15 show it has been filled. We can also show records where this
16 was called to the attention of various public agencies, in-
17 cluding the State Lands Commission, and it has been consist-
18 ently ignored.

19 You might say: What is my reason for appearing here
20 and opposing the so-called swap. It is very simple. My
21 particular interest, insofar as I am situated and obligated
22 in Foster City -- I have purchased a \$40,000 home and in so
23 doing thought that I was purchasing something that I was no
24 further obligated to except for my mortgage and for public
25 utilities. I was told that everything was in and paid for.
26 Today, I am obligated in excess of \$90,000 in addition to my

1 mortgage, by the so-called legal maneuvering that has been
2 done by the developer and by the District, which is more or
3 less an arm of the Jack Foster Enterprise insofar as their
4 construction division; and the ad valorem tax on the entire
5 Municipal Improvement District is a per capita obligation of
6 approximately \$12,000. I have a family of eight, so conse-
7 quently I am obligated for \$90,000 if we take it on a partial
8 basis and I would be obligated for an approximate \$60,000
9 over and above the mortgage.

10 At this time I have instituted a law suit, and a
11 small group of other people in a similar situation in Foster
12 City; and this slough that we are discussing within the
13 boundaries of the Estero District, they have spent \$15,000 an
14 acre filling it, developing it -- not with our approval, but
15 for the private profit of the developer.

16 Now, I'd like to know how sovereign lands can come
17 into the hands of a private developer, public moneys be spent
18 upon it, and then obligate the purchasers of the property,
19 whether it be fee simple or leasehold -- in this particular
20 case I think leasehold -- but all of these expenditures when
21 they don't even have a title to a good number of the acreages
22 within the District. The original district was 400 acres.
23 So far as my knowledge, no Legislature, no governmental body
24 has authorized the further development other than the original
25 400. Here we find we have an assessed value of \$4 million on
26 this district, which the present homeowners are obligated to

1 \$1½ million of that developmental cost.

2 I think it's time that the various government
3 agencies get together and go back and separate that that is
4 truly fee simple land and that that is State land, and keep
5 people such as I out of hock for obligations that are com-
6 pletely illegal. I feel somewhere down the line there must
7 be a public trust that can be exercised by some governmental
8 agency.

9 MR. FLOURNOY: Thank you, Mr. Cooper.

10 Is there anyone else who wishes to testify
11 before this Commission on this item that we are considering
12 now on our agenda? (No response)

13 Does the staff have anything they wish to add
14 at this point?

15 MR. HORTIG: No, Mr. Chairman -- although we, of
16 course, stand ready if the Commission has any questions on
17 specifics.

18 GOV. FINCH: I'd like to put the question to the
19 staff, first -- Is there any shrinkage involved in this so-
20 called swap?

21 MR. HORTIG: Shrinkage in the area of San Francisco
22 Bay? None. What is not resolved, as Mr. Butler said -- there
23 are other claims waterward of the areas which would be re-
24 solved by this transaction; and these claims are still subject
25 to future litigation. In other words, the problem is that
26 the present proposal would only represent a solution of part

1 of the land title problems in and surrounding San Francisco
2 Bay -- but a very important portion and, in the view of the
3 staff, a very important first step.

4 MR. FLOURNOY: In the light of that comment, let me
5 just read the recommendation that has come to us by the staff
6 and then we will determine what action the Commission wishes
7 to take:

8 It is recommended that:

9 I. The Commission find:

10 1. That the subject boundary settlement
11 and exchange is necessary in order to
12 settle and confirm the title of the State
and to establish the boundaries thereof;

13 2. That the exchange is in the interest
14 of commerce, navigation, fisheries and
reclamation.

15 3. That the value of the interests of
16 the State in the parcels of land to be
17 conveyed by it is no greater than the
value of the interests to be acquired
by the State; and

18 II. Authorize the Executive Officer:

19 1. To accept on behalf of the State of
20 California and the State Lands Commis-
21 sion deeds conveying to the State of
22 California those lands described as
Parcels "A" through "S" on file in
the office of the State Lands Commis-
sion and by reference made a part
hereof;

23 2. To execute and deliver certificates
24 and patents to Leslie Salt Co., a
25 Delaware corporation, to the lands
26 described as Parcels A-1 through A-18,
SC-1 through SC-10, and Parcels SM-1
through SM-12 on file in the office
of the State Lands Commission and by

1 reference made a part hereof, reserv-
2 ing and excepting those interests
3 specified as Parcels 1 through 19 on
4 file in the office of the State Lands
5 Commission and by reference made a
6 part hereof;

7
8 3. To receive a policy of title insur-
9 ance, in limited extended coverage
10 form, guaranteeing the title of the
11 State to the lands described in 1
12 above, in the amount of \$3,000,000;

13 4. To cause all documents of title
14 received by the State by virtue of
15 this boundary settlement and exchange
16 to be recorded in the respective
17 counties of Alameda, Santa Clara and
18 San Mateo.

19 MR. FLOURNOY (continuing) That's the recommendation
20 before us, gentlemen. What is your pleasure?

21 MR. SMITH: Mr. Chairman, I move that we approve
22 the proposed boundary settlement and exchange of lands between
23 the State of California and Leslie Salt Company, and that all
24 necessary legal and executive steps be taken to consummate
25 that settlement and that exchange of lands.

26 GOV. FINCH: I'll second it.

MR. FLOURNOY: It has been moved and seconded that
the recommendation of the staff be approved in this matter.
Without objection, it will be so ordered.

The only remaining item that we have on our calendar
is with regard to the next meeting of the Lands Commission,
which is set forth in the calendar for Thursday, February the
29th, 1968 at ten o'clock in Sacramento.

Without objection, the meeting of the Lands
Commission is adjourned.

Adjourned 12:25 p.m.

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REPORTER'S CERTIFICATE

I, Louise H. Lillico, reporter for the Office of Administrative Procedure, hereby certify that the foregoing pages 1 through 69 contain a full, true and accurate transcript of the proceedings in the meeting of the State Lands Commission held in San Francisco, California, on Friday, January 26, 1968.

Dated: Los Angeles, California, February 14, 1968.

/s/ Louise H. Lillico