

1 MR. GLADISH: I don't have any correspondence  
2 in my hands, Mr. Chairman. I don't know.

3 CHAIRMAN FLOURNOY: Mr. Cory, I think he does. I  
4 would hope that we would not be repetitive.

5 ASSEMBLYMAN CORY: Mr. Chairman and members,  
6 there is, I guess, five points I would like to make suggesting  
7 why you should not approve the staff's recommendation on  
8 this. First of all, the fee suggested is inadequate, and  
9 being consistent with the action that you took on the  
10 Sequoia lease previously, in reviewing the documents, I  
11 came to the conclusion that this lease is based upon a  
12 six-percent return rather than an eight-percent return.  
13 So it is faulty in the same manner as the Sequoia one was  
14 on the basis to begin with. That is just the first flaw  
15 that I find in that.

16 There is another thing. I believe you are familiar  
17 with the Auditor General's report on State leasing of  
18 these types of facilities generally, which was highly  
19 critical of the Lands Commission staff in the way they have  
20 been handled. One of the differences is that they made  
21 comparisons between the Port of Los Angeles and the City of  
22 Long Beach, whose leases for facilities of this type include  
23 a wharfage fee. It is standard throughout the entire  
24 west coast, possibly even in violation of the antitrust  
25 laws that everybody charges one cent per barrel for the

1 right to move the oil across, a wharfage fee if you will.  
2 The City of Long Beach is receiving that. The Port of  
3 Los Angeles is receiving that. Seattle charges such a fee.  
4 Other governmental agencies charge that kind of a fee. The  
5 State of California has not and that is a significant  
6 reduction in the revenues to the State of California. If  
7 such a fee were charged, given things we gleaned out of the  
8 environmental impact, we are talking about a half a billion  
9 dollars a year that could be collected.

10 And that has not been contemplated. It is a  
11 concept that the State Lands Commission has not in the past  
12 charged. But here is a new lease. There are other  
13 governmental agencies that do it, and therefore I think it  
14 should be considered. And that's the reason why I bring  
15 it to you.

16 Now, trying to move on, with respect to the impact  
17 statement, my review of that finds it entirely inadequate  
18 because it in essence relies upon a Federal EIR. And when  
19 you go through it, there is a great deal of detail in there  
20 with reference to the fact that they have taken cognizance  
21 of where the lines are actually located to minimize any  
22 difficulties with faults or seismic activity, earthquake  
23 problems.

24 When you actually, on a very careful analysis,  
25 you find that the Federal report was for one set of pipeline

1. located in a different location than the pipelines  
2. contemplated in this. And there is an erroneous -- If you  
3. are placing pipelines carefully to avoid earthquake difficulties,  
4. there is no amendment to the Federal report to see how  
5. they really do conform and do not conform. I think the  
6. impact report is faulty in that regard and should at least  
7. be amended to make a clear statement as to how those do  
8. relate to the incoming and outgoing line.

9. The application and recommendations of the staff  
10. do not include absolute liability, a point that was touched  
11. on in the ARCO matter, and I won't dwell on that; I think  
12. you understand that.

13. The final point I think that I would like to say,  
14. if you feel that you must proceed with this one -- I feel  
15. that you should not -- I feel that the impact statement is  
16. not adequate according to current law and I am prepared  
17. if you do proceed, to take the question to the courts  
18. immediately. So if you do choose to proceed, I would hope  
19. that you would ask your attorney to follow mine across to  
20. the Superior Court because we are asking for a restraining  
21. order.

22. LIEUTENANT GOVERNOR HARMER: That's almost  
23. standard procedure, Mr. Cory.

24. ASSEMBLYMAN CORY: I realize that, but to do  
25. otherwise would be sneaky. I didn't want to be sneaky about

1 it but I really feel that it is inadequate.

2 LIEUTENANT GOVERNOR HARMER: I would never accuse  
3 you of being sneaky.

4 ASSEMBLYMAN CORY: So I just wanted to lay it out  
5 on the table so that you knew it and so that you would have  
6 your guy there, but I am sure that you will see the wisdom  
7 of my words and forget the foolish statement that I made  
8 at the last and will decide this on the merits and not  
9 approve this.

10 CHAIRMAN FLOURNOY: I appreciate that, Mr. Cory.  
11 Thank you.

12 MR. CAPPELLO: May I, Mr. Chairman.

13 CHAIRMAN FLOURNOY: Sure.

14 MR. CAPPELLO: Again, Mr. Chairman, for the  
15 record I am A. Barry Cappello, City Attorney for the  
16 City of Santa Barbara. I apologize to Mr. Gladish because  
17 I did not indicate that I wanted to speak on this issue.

18 We actually feel that we did not receive adequate  
19 notice with regards to this particular issue. Two particular  
20 points I'd like to make. Number one, and I will be very  
21 brief, we did oppose the EXXON project, and we incorporated  
22 our remarks and are incorporated at the time of the  
23 Federal lease in this EIR and are incorporated therein  
24 and wish to have them made a part of this record, if they  
25 may.

1 CHAIRMAN FLOURNOY: All right.

2 MR. CAPPELLO: Thank you. Number two, and most  
3 importantly, as this Commission knows, the City of Santa  
4 Barbara has always taken the position that the State Lands  
5 Commission should be the leader, in new leases, in new  
6 leases, to have a clause in there that the company accepts  
7 total and absolute liability for all damages that arise  
8 from any accident regardless of negligence on the platform.  
9 This is a new lease. This clause is not in this lease  
10 and we feel that this Commission should not go out without  
11 that clause in the lease.

12 CHAIRMAN FLOURNOY: Okay.

13 MR. COLE: Mr. Chairman.

14 CHAIRMAN FLOURNOY: Yes, sir.

15 MR. COLE: William Cole, from the Gas Company.

16 Just so that there is no question, I would ask that my remarks  
17 with respect to the ARCO application be incorporated in the  
18 record with respect to the EXXON application.

19 CHAIRMAN FLOURNOY: They will be so incorporated.  
20 Any further comments?

21 What about the comment, Mr. Gladish, with regard  
22 to the six percent figure in this particular lease?

23 MR. GLADISH: Mr. Chairman and Mr. Taylor, would  
24 it be possible for us, for the Commission to adopt a  
25 language that would allow for incorporation of the ultimately

1 agreed on rate, ultimately the rate passed by the Commission,  
2 whatever that might be?

3 MR. TAYLOR: Mr. Gladish, I think the answer to  
4 that is that this is a contract arrangement, but this  
5 Commission has the ability to make any statement it wants to  
6 with regard to its approval of this lease. If it is  
7 concurred to by ARCO then it would become effective -- or  
8 EXXON, excuse me. You could approve it at this point at  
9 eight percent rental. You could approve the calendar item  
10 subject to the fact that they would agree to an amendment  
11 of the lease or a change in the terms before it is signed of  
12 eight percent consideration, and that the consideration item  
13 set forth here be revised to reflect an eight percent figure.  
14 You could condition the approval.

15 CHAIRMAN FLOURNOY: We could condition it on  
16 the basis that it would be subject to an eight percent  
17 approval if the Lands Commission adopted a regulation to  
18 such effect within what, six months or a year? That would  
19 give you plenty of time to have that reviewed. So it is  
20 contingent on moving if such a regulation is adopted to  
21 apply to all renewals and new leases within six months.

22 MR. TAYLOR: That language should be worked into  
23 the lease and just made part of it.

24 ASSEMBLYMAN CORY: That leaves the mortgage question  
25 now.

1 CHAIRMAN FLOURNOY: I understand that. That is  
2 a different question.

3 MR. TAYLOR: You have the power to set it.

4 CHAIRMAN FLOURNOY: Why don't we do this? If  
5 there is going to be consideration of a regulation which  
6 is going to change the rate to be considered, and we have  
7 already served notice of the public hearing on that, I think  
8 we should have the leeway that the rate would be set  
9 pursuant to regulation and so adopted to apply to all new  
10 and transferred leases.

11 MR. GLADISH: Mr. Chairman, that would allow this  
12 item to proceed in this instance.

13 CHAIRMAN FLOURNOY: Yes, as far as that is  
14 concerned. There is no question about it.

15 MR. TAYLOR: There would have to be an amendment.

16 CHAIRMAN FLOURNOY: I will move the amendment and  
17 he will second it, I hope.

18 LIEUTENANT GOVERNOR HARMER: Second.

19 CHAIRMAN FLOURNOY: Or we don't have an amendment.

20 MR. TAYLOR: As I understand it then, the  
21 consideration would be six percent so long as that is the  
22 policy, but if the policy should change within six months  
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24 CHAIRMAN FLOURNOY: Six months, I would think.

25 MR. TAYLOR: -- the consideration would automatically  
change to the new policy of the Lands Commission.

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CHAIRMAN FLOURNOY: You could do it that way, or we are talking a six months figure, you could make it retroactive to the time of the lease. Can you do that?

MR. TAYLOR: Well, you are --

MR. GLADISH: That's a new lease.

CHAIRMAN FLOURNOY: It's a new lease. All I am saying is that if the Commission, within six months, decides that the basis should be eight percent for all leases, this one will be adjusted to eight percent from its commencement.

MR. TAYLOR: That is fine.

LIEUTENANT GOVERNOR HARMER: Second.

CHAIRMAN FLOURNOY: That amendment has been moved and adopted. As to the other problem --

LIEUTENANT GOVERNOR HARMER: Is there a rationale, Mr. Gladish, that has been presented to us regarding the wharfage fee, the cent a barrel wharfage fee? Is there a distinction between our own situation here and that situation

MR. GLADISH: Yes, Governor. We, and I'm not sure about the date but it was somewhere between six and nine months ago, we received a report from the Auditor General's Office, raising some of these kinds of questions. That report was rebutted before this Commission and a formal report filed as to the nonapplicability of some of those concepts. And generally, what is going on when you start talking about the Port of Seattle or the Port of Los Angeles

1 or the Port of Long Beach, they are providing services to  
2 those, and in some cases actually building the docks or  
3 whatever else, the facilities, lights, power and so forth.  
4 We provide only unimproved sites, and that is the distinction  
5 between us and the kind of people that have been referred  
6 to today. And in that discussion, the major distinction is  
7 we are leasing unimproved real estate.

8 CHAIRMAN FLOURNOY: It is a matter of fact that  
9 this matter was reviewed by the Commission and the staff  
10 did submit a report rebutting it. I recall that specifically  
11 and to the satisfaction of the Commission. We did not  
12 change the policy.

13 MR. GLADISH: Yes, right. We do not provide  
14 police services or sanitation services or anything.

15 CHAIRMAN FLOURNOY: The matter was reviewed in  
16 its entirety at that time and I think that basically it could  
17 be inappropriate to review it in terms of this particular  
18 lease.

19 ASSEMBLYMAN CORY: Mr. Chairman, could I impose  
20 for just 15 seconds?

21 CHAIRMAN FLOURNOY: Sure.

22 ASSEMBLYMAN CORY: There are two fees in those  
23 other leases, one a dockage and one a wharfage fee. A  
24 dockage fee is usually a per foot for the vessel, which covers  
25 the cost of the facility, the electrical, sanitation facilities

1 that Mr. Gladish speaks of. The wharfage fee is a fee  
 2 merely for having a pipeline running across the land of  
 3 which there is no facilities provided. That is using the  
 4 company's pipelines, and that is a fee. It is called a  
 5 wharfage fee because of some Constitutional questions.  
 6 And there are two separate fees and I think that that should  
 7 be made, since we are talking about a half a million dollars  
 8 a year on a significant term. Thank you.

9 LIEUTENANT GOVERNOR HARMER: Mr. Chairman, without  
 10 pursuing the matter further with respect to Mr. Cory's  
 11 observations, I'd simply move the adoption of the recommendation.

12 CHAIRMAN FLOURNOY: It has been moved and I will  
 13 second it. I would like to make a couple of observations,  
 14 too, I think, particularly with regard to this, the question  
 15 of liability. I think the State is in the middleman  
 16 position very much so, not having the ability to prevent  
 17 the Federal Government from going to the other alternative  
 18 with regard to floating ships and off-loading tankers and  
 19 everything else, for which we could prevent nothing. I  
 20 think that the County and the onshore facilities that are  
 21 contemplated are within the local jurisdiction and the  
 22 Coastal Zone Commission and I think that obviously there  
 23 are advantages to the pipeline environmentally, as well as  
 24 in terms of the gas. And I think that we should proceed.  
 25 And therefore I will second the motion and it is obviously

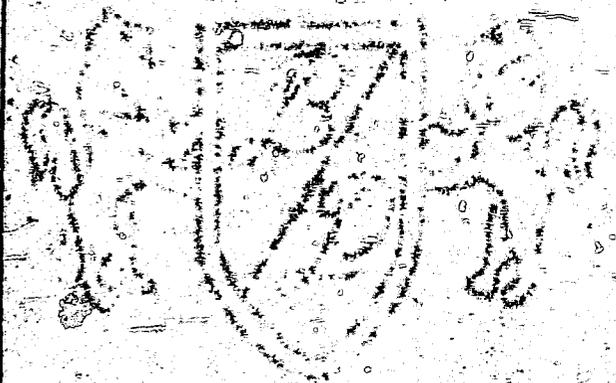
1 carried.

2 Is there anything else to come before the  
3 Commission today?

4 Then we stand adjourned.

5 (Thereupon the December 19, 1974 meeting  
6 of the State Lands Commission was adjourned  
7 at 12:55 p. m.)

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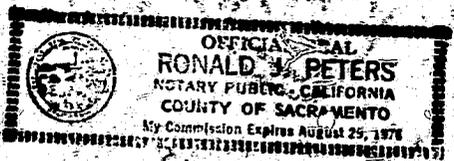
1 State of California )  
2 County of Sacramento ) ss

3 I, RONALD J. PETERS, a Notary Public in and for  
4 the County of Sacramento, State of California, duly appointed  
5 and commissioned to administer oaths, do hereby certify:

6 That I am a disinterested person herein; that the  
7 foregoing State Lands Commission Meeting was reported in  
8 shorthand by me, Ronald J. Peters, a Certified Shorthand  
9 Reporter of the State of California, and thereafter transcribed  
10 into typewriting.

11 I further certify that I am not of counsel or  
12 attorney for either or any of the parties to said meeting,  
13 nor in any way interested in the outcome of the cause in  
14 said caption.

15 IN WITNESS WHEREOF, I have hereunto set my hand  
16 and affixed my seal of office this 3<sup>RD</sup> day of JANUARY  
17 1975.



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21 *Ronald J. Peters*  
22 Ronald J. Peters  
23 Notary Public in and for the County  
24 of Sacramento, State of California  
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