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MEETING
STATE OF CALIFORNIA
STATE LANDS COMMISSION

STATE CAPITOL
ROOM 447
SACRAMENTO, CALIFORNIA

ORIGINAL

THURSDAY, DECEMBER 20, 1984

10:20 A.M.

Eileen Jennings, C.S.R.
License No. 5122

COMMISSIONERS PRESENT

Kenneth Cory, State Controller, Chairman

Nancy Ordway, Commission Alternate
for Jesse R. Huff, Director of Finance

Susan Wallace, Commission Alternate
for Leo T. McCarthy, Lieutenant Governor

STAFF PRESENT

Claire T. Dedrick, Executive Officer

James Trout, Assistant Executive Officer

Robert Hight, Chief Counsel

Lance Kiley

Lisa Butler

Dwight Sanders

Jane Smith, Commission Secretary

ALSO PRESENT

N. Gregory Taylor, Assistant Attorney General

Bruce Flushman, Deputy Attorney General

Darryl Landy, Lieutenant Governor's Office

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PROCEEDINGS

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CHAIRMAN CORY: We'll call the meeting to order.
Are there any corrections or additions to the Minutes
of the November 29th meeting?

Without objection, the Minutes are confirmed as
presented.

We have a report of the Executive Officer.

EXECUTIVE OFFICER DEDRICK: Yes, Mr. Chairman. There
are two items.

I have granted permission to the County of Sacramento
for some erosion control measures at Discovery Park.

I wanted to report to you the three-year summary of
the State Lands Commission forestry program. During those
three years CFIP funds, the California Forest Improvement
Program funds, were available to the Commission.

On-the-ground activities were completed on 32 sites,
totaling 1,306 acres. Revenue from harvest totaled
\$1,152,000-plus. Planning, cruising or marking has been
completed on another 42,000 acres.

That is all I have to report.

CHAIRMAN CORY: Questions from Commissioners?

EXECUTIVE OFFICER DEDRICK: Mr. Chairman, before you
begin the calendar, Items 9 and 22 are off. And we recommend
that Consent Item 10 be moved to the regular calendar. That is

1 the Owens Lake item.

2 CHAIRMAN CORY: Okay. We're about to take up the
3 Consent Calendar.

4 People in the audience, these are items with a prefix
5 "C" in front of the agenda item number. They are C1 through
6 11, excluding 9 and 10. Ten is off calendar in its entirety.

7 EXECUTIVE OFFICER DEDRICK: Nine is off.

8 CHAIRMAN CORY: Nine is off calendar in its entirety.
9 Ten will be taken up on the regular calendar.

10 If there is anyone in the audience who disagrees with
11 the proposed action listed on the agenda, if they would speak
12 up now, we will remove the item from the Consent Calendar.

13 If no one objects, we will take up all of those items
14 in one motion and they will be passed and you won't have a
15 chance to discuss it.

16 So, is there anybody that wishes to raise any
17 questions about any of the Consent Calendar items that are
18 remaining?

19 Without objection, the Consent Calendar will be
20 approved as presented.

21 The next item on the agenda is Item C10, Spacecraft
22 Engineering; approval of a one-year salvage permit from January
23 1, '85 for a 37.6 acre parcel in the Owens Lake, Inyo County
24 for salvaging bullion.

25 Terms of the lease are a flat \$940, 25% of the net

1 salvage value of \$25,000 or less and 50 percent of the salvage
2 value in excess of 25,000.

3 EXECUTIVE OFFICER DEDRICK: Mr. Chairman, we have
4 received some communications, which is the reason I asked you
5 to put this item on the regular calendar, from people who are
6 interested in the item and clearly had not had the opportunity
7 to find out or to learn what the conditions on the permit are.

8 I would like to ask Dwight Sanders to give you a
9 rundown on exactly what the permit conditions are on this item.

10 MR. SANDERS: Mr. Chairman, as Claire has mentioned,
11 there were several concerns voiced by interested archaeologists
12 and other people interested in historical relics as to who was
13 consulted, what significance was given to the resource and what
14 mitigation had been proposed for this particular operation.

15 As background, a negative declaration was circulated
16 to the State Historic Preservation Officer, the Office of the
17 State Archaeologist within the Department of Parks and
18 Recreation. And those entities had no comments on the proposal
19 that is now before you.

20 We have, however, included specific mitigation within
21 the permit, one of which measures requires the applicant to
22 provide the State Historic Preservation Officer and the Office
23 of the State Archaeologist with a plan prior to the
24 commencement of any operations on site that is agreeable to
25 both of those offices for the operations there to insure that

1 care is given, proper care is given, to the resources that may
2 be there and their disposition.

3 If the State Historic Preservation Officer or the
4 Office of the State Archaeologist have additional concerns,
5 those concerns will be worked into the permit as a matter of
6 course and such is provided by your action.

7 We believe that through the negative declaration
8 process and the mitigation measures that are provided within
9 the permit, that we have satisfied the letter and spirit of
10 CEQA and also the state antiquities legislation and so forth.

11 The permit, for your information, is comparable to the
12 permit that this Commission approved for the salvage of the
13 Brother Jonathan in the north coast of this state. And that
14 permit was also worked out in close consultation with the State
15 Historic Preservation Officer and the Office of the State
16 Archaeologist.

17 CHAIRMAN CORY: Anybody in the audience on this item?
18 Any questions from Commissioners?

19 Without objection, Item C10 will be approved as
20 presented.

21 Next item on the agenda is Item 12, litigation
22 settlement on Leslie Salt versus the State of California.

23 EXECUTIVE OFFICER DEDRICK: Mr. Chairman, I've asked
24 Jim Trout to present this item.

25 ASSISTANT EXECUTIVE OFFICER TROUT: We're going to put

5
1 an exhibit up where we can see it and we'll take you quickly
2 through it.

3 This lawsuit involves roughly 2,000 acres of San
4 Francisco Bay former marsh, existing marsh and tidelands.
5 The entire area shown on this map in color was patented to
6 Leslie Salt's predecessors in interest at one point in time as
7 either swamp and overflowed or tideland patents.

8 The areas were reclaimed. And by reclaimed we mean
9 they were, as required by statute, cut-off from the tidal
10 action of the bay physically and the use as required by the
11 statute.

12 The dispute in this litigation is over the true
13 character of the land. The litigation started in 1975. And
14 when it finally came to trial after years of discovery, the
15 judge asked the possibility of a settlement. Earlier
16 settlements had been attempted and were unsuccessful. However,
17 further effort was carried out.

18 Leslie and the state contracted for a retired judge to
19 sit as an independent arbiter and work with the parties in a
20 settlement.

21 What's before you today is the settlement that
22 resulted from those discussions. It is a settlement in which
23 neither side gets all it wanted, which reflects a fair and
24 equitable resolution of the dispute. The state is getting
25 equal value to the claims it believes it has and is giving up.

1 The settlement is working kind of backwards
2 alphabetically. Leslie Salt will get clear title to all of
3 Parcel E shown in the red color on that map. That will be free
4 and clear of any claims of trust for navigation, commerce and
5 fisheries on behalf of the State of California.

6 CHAIRMAN CORY: Mr. Trout, that relates to title?

7 ASSISTANT EXECUTIVE OFFICER TROUT: To title, right.

8 CHAIRMAN CORY: That's the only release of claim that
9 is granted. The only thing we're talking here is title to the
10 property, nothing else.

11 ASSISTANT EXECUTIVE OFFICER TROUT: Yes, Mr. Chairman,
12 you're correct. We're resolving a title. There still remains
13 decisions that have to be made under CEQA and other provisions
14 of law. That's provided for in the document.

15 Following on, the State of California will get fee
16 ownership of Parcel D, with Leslie retaining two easements to
17 cross the parcel. Parcel D is shown on the map in blue. That
18 is, the bed of Mount Eden Creek.

19 Parcel C the state will get fee ownership of, with
20 Leslie Salt retaining an easement for salt-making purposes.
21 That totals 153 acres.

22 Parcels B-1, B-2 and B-3 are existing marshlands, most
23 of which lie above today's mean high tide line. These lands
24 are not the subject of this settlement.

25 Leslie will get fee title to Parcels A-1 and A-2,

1 which were originally patented to their predecessors as swamp
2 and overflowed lands. They will get a confirmatory patent to
3 those lands as tidelands and they have agreed that those lands
4 are subject to the trust for commerce, navigation and
5 fisheries.

6 CHAIRMAN CORY: Pardon me. Would you go back through
7 what they're getting. Are they getting a patent or are they
8 getting a fee simple title?

9 ASSISTANT EXECUTIVE OFFICER TROUT: They're getting a
10 partial confirmation of the patent.

11 CHAIRMAN CORY: So, it's a patent interest.

12 MR. FLUSHMAN: They are getting a patent which
13 confirms an earlier swamp and overflowed lands patent and their
14 title is being confirmed in an earlier tideland patent. So,
15 the title is two patents out there.

16 But their fee title is being confirmed subject to the
17 state's reserved interest for public trust purposes.

18 ASSISTANT EXECUTIVE OFFICER TROUT: That would make
19 them the same character as all other tidelands.

20 This agreement is in settlement of a title dispute, as
21 we've already emphasized, and a matter which is in litigation.
22 It does not and is not intended to limit or affect the
23 authority or jurisdiction or extent of regulation or control of
24 any regulatory agency over the lands that are the subject of
25 the settlement agreement based on statute, administrative

1 regulation or law. This is to make it clear that we're not
2 solving any problems other than title. ~~for that, because I think~~
3 ~~you might~~ Section 6307 requires the Commission to make findings
4 which are included in the calendar item. ~~State Lands Commission.~~

5 That's the presentation in gross. We have people here
6 who can answer specific questions. I also believe that Leslie
7 Salt is represented in the audience. ~~on December 28th, today,~~

8 ~~and a p~~ CHAIRMAN CORY: In terms of the staff, the AG's for
9 the proposed settlement? ~~and 14th of December.~~

10 MR. FLUSHMAN: Yes, Chairman Cory, we are. ~~of the~~

11 ~~Dedrick.~~ CHAIRMAN CORY: I've got some requests here, I think,
12 from people who would like to comment. ~~explain in general?~~

13 ~~terms the~~ Barbara Shockley. ~~ment.~~

14 MS. SHOCKLEY: Commissioners, I am Barbara Shockley.
15 I live in San Lorenzo in the Hayward area. I represent the
16 Hayward Area Shoreline Planning Agency. That is a joint powers
17 agreement agency, exercise of powers agreement agency, which
18 consists of the City of Hayward, East Bay Regional Park
19 District, Hayward Area Recreation and Park District and two
20 unified school districts, Hayward's and San Lorenzo's.

21 Just want to read a statement which amplifies somewhat
22 the letters which the Attorney General received and which the
23 State Lands Commission has received. ~~tentative~~

24 By letter dated November 19 to Michael Valentine,
25 HASPA Chairman, Richard Sheridan, asked the State Lands

1 Commission to conduct a public hearing in Hayward on this
2 agenda item. There is some precedent for that, because I think
3 you might remember, Mr. Chairman, that you appeared in Hayward
4 in, I think, '75 on a matter before the State Lands Commission.

5 We were told by telephone that this was impossible.
6 HASPA received a written reply to this request, however, and
7 was told that the item would appear on December 20th, today,
8 and a private meeting with staff could be arranged in
9 Sacramento on the 13th and 14th of December.

10 We were grateful that your Executive Officer, Ms.
11 Dedrick, had met privately with members of the Citizens
12 Advisory Committee earlier this year to explain in general
13 terms the settlement agreement.

14 HASPA board sent a letter dated December 14th to the
15 Attorney General asking that the findings on this item pursuant
16 to Public Resources Code Section 6307 be evaluated. I wanted
17 to read -- although you might have it in your hands -- two
18 paragraphs from that letter.

19 "The members of the HASPA board,
20 which is composed of elected
21 officers of the member agencies,
22 need the opportunity to evaluate
23 the basis on which the tentative
24 settlement has been reached. The
25 board members consider this State

1 Lands Commission decision to be
2 significant because it will
3 establish the public trust in the
4 Hayward area. That is their
5 opinion.

6 "The settlement information should
7 be made available through the
8 public hearing process. Board
9 members recognize the complexity of
10 these decisions, but do believe
11 that the public has the right to
12 know before a final decision is
13 made. It is also important that
14 the state vigorously protect the
15 public trust for all of its
16 citizens."

17 Also, on December the 14th I received the full report.
18 Part of it's here. HASPA received a full report on December
19 the 18th.

20 It was HASPA's intent to bring the issues involved in
21 this case to the attention of the public since one of its
22 specific goals is to educate the citizens of the Hayward area
23 about the importance of the shoreline, both economically and
24 environmentally.

25 One of HASPA's problems arises from the fact that we

1 have two large industrial-commercial proposals within the HASPA
2 jurisdiction and it has been difficult to separate the issues
3 arising from those planning processes from the settlement of
4 title claims on the 1700-acre Baumberg Tract.

5 The public's understanding of the public trust as it
6 applies here is muddled at best. An example of the confusion
7 is illustrated in the reactions to a stipulation of fact which
8 deems Parcel E -- that is red on the map -- to be relatively
9 useless for "public trust purposes." That's in quotes.

10 HASPA's CAC -- that's Citizens Advisory Committee --
11 includes several educators from the University of California at
12 Hayward. These people have played key roles in saving, quote,
13 "the Hayward shoreline from garbage and other assorted urban
14 uses."

15 Because of this and similar statements in the
16 findings, some of which Janice Delfino will address in a
17 moment, we wish to correct the page 3 statement, Exhibit F,
18 Stipulated Findings of Fact and Conclusions of Law, lines 10,
19 11 and 12.

20 EXECUTIVE OFFICER DEDRICK: Excuse me. Barbara,
21 that's in the settlement agreement. It's not in the calendar
22 item.

23 MR. FLUSHMAN: It's in the stipulation which goes
24 before the court; is that correct?

25 MS. SHOCKLEY: Right.

1 EXECUTIVE OFFICER DEDRICK: You do not have that
2 before you, Commissioners.

3 CHAIRMAN CORY: Go ahead.

4 MS. SHOCKLEY:

5 "At such time no objection was made
6 to either the settlement, the
7 stipulated facts and conclusions of
8 law or to the proposed judgment."

9 I represent the board of the Hayward Area Shoreline
10 Planning Agency and, as such, am saying that they again request
11 a delay in this decision to allow time to respond responsibly
12 to the information you have presented so recently to us in this
13 document.

14 I understand --

15 CHAIRMAN CORY: Pardon me, I'm not sure I understand
16 the significance -- you disagree with this statement in the
17 stipulation, page 3, lines 10 through 12?

18 MS. SHOCKLEY: Yes.

19 CHAIRMAN CORY: Are you --

20 MS. SHOCKLEY: We are saying that we are here to
21 object. Does that make any sense?

22 CHAIRMAN CORY: What is your objection?

23 MS. SHOCKLEY: I think in general that the
24 characterizations in the findings, which I probably don't have
25 in front of me at the moment -- yes -- don't seem to square

1 with -- and I think what I'm trying to explain is that in the
2 eyes of the citizens -- and that's one reason we're here -- is
3 that it's very difficult to describe this area as having no --
4 that E will no longer have any characteristics that are
5 important now for open space, for any of the environmental uses
6 that it now has. It describes it as no longer having that.

7 It's very difficult for ordinary citizens to
8 understand that you can make stipulations that say that it has
9 none and that that won't be used then in the future by someone
10 who wants to develop a race track there or something of that
11 sort.

12 CHAIRMAN CORY: So, it's an objection of perception on
13 the part of others that you're concerned about.

14 MS. SHOCKLEY: And my own. I think I might understand
15 it somewhat more than others, because they've never seen this
16 document. They haven't had a chance to respond to it or even
17 to understand it.

18 One of the reasons that I'm very interested that it be
19 delayed is because this is the best way to educate the public.
20 You have two school districts; part of a joint exercise of
21 powers agreement agency, which has had an enormous influence on
22 eight miles of the Hayward shoreline.

23 I think the State Lands Commission has seen to it more
24 than once that that is what we acquired publically. And yet at
25 a moment like this we're asked not to be told what is happening

1 because it doesn't apply. And we're saying in our view it does
2 apply. Can you give us more time to look at the complicated
3 legal terminology and try to understand so that at least we can
4 communicate these ideas from us to you and from you to us?

5 CHAIRMAN CORY: Go ahead.

6 MS. SHOCKLEY: That's it.

7 CHAIRMAN CORY: Questions from Commissioners?

8 MS. SHOCKLEY: There is Janice Delfino, if she may
9 speak now.

10 MS. DELFINO: I am Janice Delfino. And I am speaking
11 at this moment as a representative of Save San Francisco Bay
12 Association.

13 The association is concerned that the documents that
14 Mrs. Shockley spoke about have not been received and -- perhaps
15 have been received by now, but have not been reviewed. And
16 Save the Bay Association would like a continuance of this
17 agenda item.

18 Now, as Janice Delfino, a member of the Citizens
19 Advisory Committee to HASPA, which is the Hayward Area
20 Shoreline Planning Agency, I would like to challenge the
21 findings on page 4 pursuant to the Public Resource Code Section
22 6307 and its Item C.

23 The lands in said Parcel E, the lands in parcel E --

24 ASSISTANT EXECUTIVE OFFICER TROUT: That would be on
25 page 74, Mr. Chairman, at the top of the page.

1 MS. DELFINO: The lands in that parcel constitute a
2 relatively small part of the total acreage that once
3 constituted the salt marsh at San Francisco Bay.

4 I contend that any land that was once San Francisco
5 Bay tidelands or marshlands are terribly important. And I
6 really don't know what the -- out of that 1700 acres in that
7 colored site, what is the total acreage of Parcel E?

8 EXECUTIVE OFFICER DEDRICK: 1,560.06.

9 CHAIRMAN CORY: Approximately.

10 (Laughter.)

11 MS. DELFINO: I consider that a tremendous amount of
12 bay land.

13 CHAIRMAN CORY: But I think the statement is that of
14 that amount, a relatively small part of the total acreage once
15 constituted the salt marsh.

16 Is that not what the statement says?

17 MR. FLUSHMAN: The salt marsh of San Francisco Bay was
18 300 square miles. This is a small part of what was once the
19 salt marsh. It has not been salt marsh since the 1880's.

20 EXECUTIVE OFFICER DEDRICK: The real purpose of that
21 statement is compliance with --

22 MR. FLUSHMAN: Case law and statute.

23 EXECUTIVE OFFICER DEDRICK: -- case law and it does
24 not denigrate the value of the area in question. It's simply
25 one of those things you --

1 Bruce, why don't you explain it.

2 MS. DELFINO: It really raises our hackles, because we
3 protect even a half acre of salt marsh. I mean, we're
4 concerned even about a small portion.

5 CHAIRMAN CORY: There is no value judgment when I read
6 that statement that small is not significant, but merely a
7 statement of fact that that is small in proportion to the total
8 size of the bay. If I'm misreading it -- but I think that's
9 all that was intended to be said.

10 MR. FLUSHMAN: That's correct.

11 MS. DELFINO: All right. Then Item D:

12 "The value of the interests
13 acquired by the Commission in
14 Parcels A, C, and D on said Exhibit
15 C ..." that would be in that same
16 document "... by virtue of said
17 settlement agreement are equal to
18 or greater than the value of those
19 interests granted or relinquished
20 by the Commission to Leslie Salt."

21 As I read this or as I understand it, the value -- E
22 doesn't seem to have much value according to this --

23 MR. FLUSHMAN: This is the legal judgment that's made
24 as to what our ownership claims are in the area. It has
25 nothing to do with the environmental value past or present.

1 CHAIRMAN CORY: But there is a question also that I
2 think needs to be put on the table here that E is 1,500-plus
3 acres, but there is a further delineation of what our interests
4 are in E. And there is, I do not believe, any indication that
5 we own all of E in fee simple or that we have ever owned all of
6 E in fee simple. There are portions of E which the state
7 claims ownership to and it is those portions which are equal
8 to -- that's the equality question that's being asked. Not the
9 total value of E, but that portion of E to which the state has
10 a legitimate, viable claim.

11 ASSISTANT EXECUTIVE OFFICER TROUT: That's exactly
12 correct, Mr. Chairman. The state's claim in Parcel E we
13 estimate to be equivalent in value -- it is not of the whole of
14 Parcel E -- being equivalent in value on a
15 fair-market-appraisal standpoint to the 153 acres the state is
16 acquiring in Parcel C.

17 MS. DELFINO: I just don't --

18 MR. FLUSHMAN: Maybe I can explain it in a different
19 way.

20 In litigation, claims are made for purposes of
21 positions that have to be taken to assert the state's interest.
22 In this litigation the state asserted that it had an interest
23 or owned in fee all of the acreage that was in dispute.

24 As a matter of resolving a disputed title -- because
25 Leslie vigorously contests that the state has no interest

1 whatsoever in any part of this area, regardless of what the
2 nature of the land is presently and regardless of its value for
3 wildlife habitat. Leslie claims they own it in fee simple
4 absolute, free of any state interests.

5 We are resolving that dispute here. Judgment was made
6 based on the kinds of evidence that you see highlighted --
7 only say highlighted -- in the settlement agreement, which was
8 composed of a number of documents, including a stipulated set
9 of facts which highlight what the underlying facts are of this
10 case.

11 Based on the judgments that are made in resolving by
12 negotiation a title dispute, the state's interests in what is
13 described as Parcel E was determined to be equal to the
14 interest in value that it's receiving in the remaining parcels
15 that it's receiving by the settlement agreement.

16 MS. DELFINO: But who is to judge the value of one
17 parcel as compared with -- all right, Parcel E as compared with
18 A, C, B and D? I'm thinking of the -- oh, let me see.

19 The public trust needs also include open space and
20 wetland wildlife habitat protective needs. Therefore, I feel
21 that through continued amateur observations, scientific
22 studies, we know that Parcel E has tremendous wildlife uses,
23 nesting, roosting, resting areas, plus the open space aspect.

24 I feel that the public trust should be exercised in
25 this area.

1 MR. FLUSHMAN: I don't mean to quibble with you, Ms.
2 Delfino. That's the question, is there a public trust. That's
3 been the whole question in this lawsuit that's gone on for nine
4 years. And we're resolving what is public trust areas and
5 ownership interests. Not on land use, not on land use
6 regulatory interests, but an ownership interest. That's all
7 that's being resolved.

8 If there are wildlife values that have to be retained
9 in the Baumberg area that is not being resolved in this
10 settlement, then that is a subject that has to be taken up in
11 the permit, in the land use regulatory process.

12 That, as I understand, is what's going on right now.
13 There has been a proposal made to the Corps of Engineers for a
14 permit to construct a development.

15 CHAIRMAN CORY: The question before us at this point
16 is trying to resolve an ownership question and how much of that
17 area that there in fact is a legal, documentable, certifiable
18 public trust in; not what the public trust might want to be or
19 what our value judgments might be.

20 As I understand the situation, if we don't take this
21 settlement and we choose to litigate, given the facts, the
22 court could find that there is no public trust and no public
23 interest in any of E and we have no title interest and we own
24 nothing. Is that a correct statement?

25 MR. FLUSHMAN: That would be the worst-case result of

1 this against us. That's a potential.

2 CHAIRMAN CORY: The question before us in the
3 settlement is not what we would like to have in terms of land
4 use or where we would like to exercise the public trust, but
5 how much can we get given the facts, circumstances that exist.
6 And some trier of fact somewhere is going to come down and say,
7 this is what you own and this is what you don't own and this is
8 what you have a public trust that you can exercise some control
9 over. That's the question before the court in this case.

10 MS. DELFINO: In one of the documents I read that the
11 Commission contends that the lands in the settlement area are
12 sovereign tidelands in which the State of California retains an
13 inalienable public trust easement or are sovereign submerged
14 lands never available for sale. That was on page 10 of the
15 Certificate of Acceptance.

16 When I read a statement like that, it makes me feel
17 that the State of California has not really exercised its
18 public trust over that Baumberg site, the full public trust.
19 I mean, I think we're giving away too much.

20 CHAIRMAN CORY: How would you feel if we litigated it
21 and the court says, you don't have anything, it's all over,
22 Leslie owns all of that?

23 MS. DELFINO: What's wrong with trying that?

24 CHAIRMAN CORY: Because we could lose everything and
25 we wouldn't get the 150-some acres.

1 MS. DELFINO: I'm really not worried about that
2 bayward acreage, because that probably could not be developed.

3 CHAIRMAN CORY: See, our problem is that if that
4 happened, it's not just this parcel. There's a whole lot of
5 other properties and a whole lot of other settlements in which
6 the state would lose a great deal and the environment would
7 lose a great deal.

8 MS. DELFINO: But aren't we doing that right now?
9 Because there is a porposal to develop all of Parcel E. We
10 know that. We've been -- well, we know that. That's why I
11 feel that --

12 CHAIRMAN CORY: If Leslie owns Parcel E, they have
13 certain rights as a property owner which we can't interfere
14 with.

15 MS. DELFINO: But maybe I misunderstand what the
16 public trust is or what that statement was that the --

17 CHAIRMAN CORY: There is a dispute as to what the
18 facts are as to what area the public trust applies to and that
19 is the question of the law suit which we're trying to resolve.

20 Our option, as I understand it at this point, is we
21 can get D, C and A-1 and A-2; or we can continue to litigate
22 and we can end up with what the little boy shot at, nothing.
23 That's a possibility.

24 Our lawyers are telling us, take what you can get and
25 get out while you can, because the facts ain't too good in this

1 one. I mean, that's what they're telling us.

2 Now, if you've got some facts that would indicate
3 something contra, I'm very interested in listening. But we're
4 getting sort of a unanimous opinion from our staff that we've
5 got some weaknesses with the lawsuit that we better look at.

6 MR. FLUSHMAN: Chairman Cory, may I add that this is
7 not something -- Ms. Delfino, if you'll bear with me. This was
8 not something that was entered into on the spur of the moment.
9 This litigation has been going on for nine years.

10 Mr. Washburn and his enormous staff have been
11 preparing this case for trial. And in preparation for trial we
12 took 28 depositions of mutual expert witnesses. The expert
13 witnesses in this case costs alone are enormous.

14 It was not done on the decision to resolve a case. It
15 has not been done just because it's convenient for the state.
16 A lot of thought and a lot of effort went into preparing this
17 case for trial and a lot of effort has been made in making the
18 decision as to whether to pursue it or not and what other
19 interests could be effected if the case was pursued and lost.

20 To respond to your specific point, the Commission's
21 findings are not intended to -- and this is right in the
22 calendar item and in the settlement agreement to which Leslie
23 has agreed -- are not intended to and do not affect the
24 authority or jurisdiction or the extent of regulation or
25 control, if any, of any regulatory agency that claims to have

1 such control.

2 So, for example, if there is a BCDC permit process,
3 that has to be undertaken, the agreement itself and the
4 findings made by the Commission have no bearing on that. That
5 is a separate determination that is going to be made by another
6 regulatory agency based on its own authority looking at what
7 it -- based on whatever authority it has and can make whatever
8 decision it needs to do to agree or to deny a permit for the
9 development.

10 The findings here determine only ownership interest.

11 EXECUTIVE OFFICER DEDRICK: Mr. Chairman and Ms.
12 Delfino, on page 75, the item headed "J" was added to the
13 findings for the Commission and also to the settlement
14 agreement in response to the concerns of Ms. Delfino, among
15 others, that making a property settlement would in some way
16 hamper the City of Hayward or the Department of Fish and Game
17 or the other appropriate agencies from carrying out their
18 duties.

19 So, we specifically have stated in both the settlement
20 agreement, with the agreement of Leslie, and in the findings
21 before the Commission that that is not the case and cannot be
22 construed to be the case.

23 MS. DELFINO: Thank you for the opportunity.

24 CHAIRMAN CORY: If there are any other -- I don't mean
25 to cut you off. I'm just trying to get at the heart of the

1 matter as to what we're dealing with here. And any information
2 you have to put on the table concerning that, we want to hear
3 that.

4 MS. DELFINO: Well, I think I've said what I had to
5 say. Thank you.

6 CHAIRMAN CORY: Thank you.

7 Yes.

8 MS. SHOCKLEY: I think you're asking a rather
9 difficult question on the basis that we haven't had the
10 information in front of us to even look at.

11 But aside from that, what would it mean if you decided
12 not to settle?

13 CHAIRMAN CORY: One of the first things it would mean,
14 as I understand it, that we would probably have to litigate
15 this case. And if we litigated this case, we could end up
16 having virtually no title in this area if we lost everything.
17 And the technicians --

18 MS. SHOCKLEY: Then does that mean in the future that
19 we are to accept the stipulation that Leslie and you have
20 agreed to, which is, I guess, that the tidelands -- that
21 there's no agreement? But could it possibly be used that the
22 tideland is not at the Rancho line, but rather at the
23 shoreline?

24 MR. FLUSHMAN: No.

25 CHAIRMAN CORY: That is a question that, as I

1 understand it, both sides have agreed that their self interest
2 is in avoiding the determination of the answer to that
3 question. Is that correct?

4 MR. FLUSHMAN: Yes, Chairman Cory. The questions in
5 the lawsuit are not being resolved. The legal questions and
6 the factual questions are not being resolved. There are
7 different contentions made by the parties concerning those
8 legal and factual questions.

9 CHAIRMAN CORY: We are in essence coming to the
10 conclusion that to get to that bottom-line question, we would
11 like a better set of facts to ask the court to come to that
12 conclusion on.

13 MS. SHOCKLEY: Is that possible in the Bay Area? And
14 do you have have cites that you're looking at? May I ask that
15 question?

16 MR. FLUSHMAN: You're asking it of me?

17 MS. SHOCKLEY: Anyone who wants to answer.

18 MR. FLUSHMAN: I would hope that there would be a case
19 with better facts. There are remaining unresolved title
20 questions in the Bay Area.

21 Let me just add one thing quickly so you'll
22 understand.

23 Let's assume that we went through the entire
24 litigation and lost the case. That does not mean that during
25 the permit, land use and planning process the same values that

1 you're concerned with would be taken care of. Because Leslie
2 still has to get those sort of permits.

3 MS. SHOCKLEY: I'm not concerned at the moment about
4 other jurisdictions and their opportunity for making some
5 effects on the future of this development or any other in the
6 Bay.

7 What I am concerned about is that the State Lands
8 Commission is going to stand up -- and what I feel that I
9 haven't had the information on that I would have liked is the
10 case by case that has made this determination so strong. I
11 would like to know that before the decision is made. I don't
12 mean specifics, but I mean case law. Which ones? Is it
13 Berkeley?

14 MR. FLUSHMAN: That's a very difficult question. You
15 haven't lived with the case for nine years.

16 MS. SHOCKLEY: I know it's a difficult question.

17 CHAIRMAN CORY: The question, I think -- the
18 difficulty of putting that in the public sector is a problem
19 and a vexing one for public officials. Because when you get to
20 a question where there are two sides to a lawsuit, for us to
21 expose and discuss in detail the weaknesses of our lawsuit
22 undermines our position in asserting our full rights in other
23 areas.

24 MS. SHOCKLEY: I find that -- I'm sorry, I'm not that
25 sophisticated about this. But I found that almost as amusing

1 as questioning whether the Soviets can tell what we're doing
2 and we can tell what the Soviets are doing in the way of
3 armaments.

4 CHAIRMAN CORY: In litigation, if we go through and
5 lay out here in a public record chapter and verse of the
6 weaknesses, then you don't need to have a rocket scientist as
7 your lawyer when you take on the state in your next lawsuit.

8 I mean, that's the difficulty. I think that there are
9 people who have similar value judgments to yours who are
10 relatively close to this organization who could share with you
11 those things privately, because they feel that you would treat
12 them in confidence.

13 I am unwilling to do that; because when I think about
14 my public health, I don't think I can in good conscious
15 disclose either here or privately the weakness of the state's
16 position, because I think I would adversely affect our ability
17 to win title suits in other areas.

18 All I can say is that in total there is unanimous
19 agreement on the part of the staff that we should take what we
20 can get out of this one and terminate the lawsuit; that the
21 settlement offered is more than fair and is probably more than
22 we could get if we litigate it.

23 MS. SHOCKLEY: Well, thank you for --

24 CHAIRMAN CORY: That's a value judgment. I don't have
25 anybody on the immediate staff who is contending anything other

1 than that, save one input that I have had. That person has
2 some theories, but no hard facts to back up the theories. And
3 we've spent nine years developing theories and we haven't been
4 able to get the facts for that additional theory. It's an
5 intriguing theory, but I'd like to test it someplace where
6 we've got some better facts.

7 MS. SHOCKLEY: Going back to my original argument,
8 which was that this is an educational process. I would hope
9 that you would still consider, on the basis of influencing
10 people about all this, that you would delay the decision.

11 I have a feeling that there's a great need to finish
12 it up in the year '84. But I would hope that, considering
13 information we've received, you would consider at least a
14 continuance.

15 I thank you for this opportunity very much.

16 CHAIRMAN CORY: Thank you.

17 Questions from Commissioners?

18 We have two other people.

19 Mr. Alan Woodhill, any comments?

20 MR. WOODHILL: I don't have any comments to make at
21 this time.

22 CHAIRMAN CORY: Mr. Washburn?

23 MR. WASHBURN: I'm the attorney for Leslie Salt and I
24 would like to make just several brief comments.

25 First of all, from our perspective --

1 CHAIRMAN CORY: Could you use the microphone? Because
2 we probably won't get you for the record. Although most all of
3 us can hear you, the record may not.

4 MR. WASHBURN: I would like to give you some
5 perspective from Leslie Salt's point of view concerning the
6 settlement. That is, that we strongly believe that were this
7 lawsuit to go full term, that we would prevail on all of the
8 property and, with that in mind, consider the settlement to be
9 one highly beneficial to the state in the sense that Leslie is
10 giving up more than it thinks it ought to; the reason being
11 that this case has gone on for nine years. It takes time, it
12 takes money.

13 With all those considerations in mind, it makes sense
14 from Leslie's point of view to give up lands to which it
15 believes it's entitled to terminate this proceeding now.

16 So, although some people may think the state didn't
17 get enough, we certainly don't perceive it that way.

18 Secondly, we certainly do understand that this is a
19 title settlement. That's all that's been involved in this
20 litigation. I don't think that the documents that support the
21 settlement in any way indicate that land-use decisions are
22 being affected one way or the other.

23 Lastly, regarding the request for additional time,
24 this case has gone on for nine years. The settlement has
25 taken -- I counted the weeks. It was arrived at exactly 54

1 weeks ago today. It has taken 54 weeks to arrive at the
2 language that's in the settlement. It's been given wide
3 publicity in the Bay Area from the time it was initially
4 announced a year ago. There's nothing secret about it. The
5 basic terms have remained the same throughout, with the
6 exception that Leslie has given up certain lands that it
7 originally did not agree to give up.

8 So that we really don't believe that there's any valid
9 basis to claim that this is something that was not known
10 publically. It's been given wide distribution in this area.

11 The delay we don't think is called for, given the fact
12 that interested parties have known about this lawsuit not only
13 since the time the settlement was originally announced, but
14 also since the time the lawsuit was commenced in 1975.

15 The documents are public. Various parties have been
16 in communication with the court, with the attorneys. Nothing
17 is secret.

18 We have a practical problem aside from continued
19 delays with regard to the settlement. That is, the judge who
20 has been hearing this matter, Judge Sabraw in Alameda County,
21 has devoted a great deal of time already familiarizing himself
22 with the case. He has been elevated to the Court of Appeals
23 and will no longer be available beyond next week.

24 This particular settlement has to be approved by the
25 judge and we do not believe it's fair to the court or to

1 ourselves to delay this matter any further and require a new
2 judge to familiarize himself with something that might be as
3 complex as this particular dispute is.

4 For these reasons we feel that further delays will not
5 benefit anyone. It will inconvenience the court, cost more
6 money in time for all concerned. The matter should be approved
7 now.

8 It's been, from our perspective, a tough fight with
9 the state. You have been well represented. Your negotiators
10 have been tough. We certainly don't perceive this as a victory
11 for Leslie Salt. We think it's a fair resolution of a fairly
12 complicated lawsuit concerning the title of these lands.

13 CHAIRMAN CORY: The settlement does go before a judge
14 in open public court?

15 MR. WASHBURN: That's correct.

16 CHAIRMAN CORY: Questions from Commissioners?

17 COMMISSIONER ORDWAY: So move.

18 CHAIRMAN CORY: We have a motion to approve the
19 settlement.

20 All those in favor, say aye.

21 (Ayes.)

22 CHAIRMAN CORY: Opposed?

23 Motion is carried.

24 Item 13. If I can find my place back on the agenda.
25 This is to deny without prejudice an application for use of

1 state-owned land. What location is this property?

2 EXECUTIVE OFFICER DEDRICK: This is Las Tunas Beach,
3 just up the coast from Malibu.

4 CHAIRMAN CORY: Malibu.

5 Anybody in the audience on this item? Any questions
6 from Commissioners?

7 Without objection, Item 13 will be denied without
8 prejudice.

9 Item 14, authorization of the staff of the Commission
10 to submit a claim for damage to the Forestry Service for some
11 trees they took off our property.

12 EXECUTIVE OFFICER DEDRICK: That's right.

13 MR. TAYLOR: Mrs. Patrick is in the audience on Item
14 13. I don't believe she has anything to say, but we might
15 acknowledge that she's here.

16 CHAIRMAN CORY: On Item 13, is there anybody who
17 wishes to say anything?

18 I asked and nobody came forward. So, that item has
19 been disposed of.

20 We're now on item 14. Do you have any comments on the
21 feds and their continual wanton disregard of private property
22 rights, stealing from the State of California again in their
23 continual fashion that they've been doing through many
24 administrations of any political party?

25 EXECUTIVE OFFICER DEDRICK: The facts speak for

1 themselves.

2 CHAIRMAN CORY: Any objection to authorizing staff to
3 assert our rights and get our dough back from these timber
4 thieves? Nothing lower than a timber thief. Without
5 objection, Item 14 is approved.

6 Item 15, amend existing dredging permit for Southwest
7 Marine Shipyards in San Diego Bay.

8 Anybody in the audience on this item? Questions from
9 Commissioners?

10 Without objection, Item 15 approved as presented.

11 Item 16, proposed authorization for Union Oil to defer
12 drilling operations, Santa Barbara County.

13 Anybody in the audience on this? Questions from
14 Commissioners?

15 Without objection, Item 16 approved as presented.

16 Item 17, assessment of penalty and interest for late
17 payment made by PRI of Hawaii under Royalty Oil Contract on the
18 offshore in Santa Barbara.

19 Anybody in the audience on this item? Questions from
20 Commissioners?

21 Without objection, Item 17 approved as presented.

22 Item 18, approval of one-year permit, January 1, '85,
23 to dredge 120,000 cubic yards from the bottom of Newport Dunes
24 Marina, Orange County.

25 Anybody in the audience on this item? Questions from

1 Commissioners?

2 Without objection, Item 18 approved as presented.

3 Item 19, assessment of penalty and interest against
4 Edgington Oil on a late payment for the Huntington Beach field.

5 Anybody in the audience on this item? Questions from
6 Commissioners?

7 Without objection, Item 19 approved as presented.

8 Item 20, fourth modification for Plan of Development
9 and Operations. Where's Moose?

10 You got anything to tell us about this?

11 MR. THOMPSON: It's all good news. More revenue.

12 CHAIRMAN CORY: Not enough, but it helps.

13 Any questions from Commissioners?

14 Without objection, Item 20 is approved as presented.

15 Item 21, authorize acceptance of sovereign land
16 parcels in Santa Clara and Alameda County to be leased to the
17 United States Fish and Wildlife Service for inclusion in the
18 San Francisco Bay Refuge.

19 Anybody in the audience on this item? Questions from
20 Commissioners?

21 Without objection, Item 21 is approved as presented.

22 22 is off.

23 And 23. The Executive Officer has trouble
24 communicating and needs fifteen grand to be bailed out. Speak
25 to us, poorly.

1 EXECUTIVE OFFICER DEDRICK: We have been working with
2 a management consultant to improve the deficiencies of the
3 State Lands Commission staff. We've been working with someone
4 for about the last year. We've been getting very positive
5 results, positive results from the staff.

6 CHAIRMAN CORY: Must be a hell of a sweet talker if
7 he's going to get another fifteen grand out of you.

8 EXECUTIVE OFFICER DEDRICK: Well, in regards to the
9 amount of money, Commissioners, the actual contract will be in
10 the range of \$3,000. We're asking for 18 months -- \$3,000
11 year, maybe four. We're asking for enough money to go through
12 an 18-month program.

13 I don't know who picked the 15,000 and I didn't stop
14 it in time to get it down to ten. Just think, after all, we
15 need to have something to talk about.

16 COMMISSIONER ORDWAY: Is this sole source or out to
17 bid?

18 EXECUTIVE OFFICER DEDRICK: No, it's out to bid.

19 CHAIRMAN CORY: Questions?

20 Okay, without objection, Item 23 is approved as
21 presented.

22 We've completed our calendar.

23 Bud, are you here to tell us about Oregon boundary
24 or --

25 MR. UZES: We had a meeting, met with the attorneys

1 and state land officials in Oregon and sort of established a
2 relationship with them to continue working in the future.

3 CHAIRMAN CORY: Okay.

4 If there's nothing else to come before us, we stand
5 adjourned. Thank you for your patience.

6 (Thereupon the meeting of the State Lands
7 Commission adjourned at 11:15 a.m.)
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CERTIFICATE OF SHORTHAND REPORTER

I, EILEEN JENNINGS, a Certified Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing meeting was reported in shorthand by me, Eileen Jennings, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said meeting nor in any way interested in the outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 31st day of December, 1984.


EILEEN JENNINGS
Certified Shorthand Reporter
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