BEFORE THE STATE LANDS COMMISSION
OF THE
STATE OF CALIFORNIA

IN THE MATTER OF A MEETING OF THE STATE LANDS COMMISSION	)	General Meeting

TRANSCRIPT OF PROCEEDINGS

Thursday, May 23, 1991

City of El Segundo
City Hall Council Chambers
350 Main Street
El Segundo, California 90245

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APPEARANCES

STATE LANDS COMMISSION

Commissioners:

Jim Tucker
Leo McCarthy - Chair
LaFenus Stancell

Staff:

Charles Warren, Executive Officer
Robert Hight, Chief Counsel
Gary Gregory
Lance Kiley

PUBLIC

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STATE LANDS COMMISSION

May 23, 1991

4:00 p.m.

-- P R O C E E D I N G S --

CHAIR McCARTHY: This is a meeting of the State Lands Commission. On my right is Commissioner Tucker sitting in for Controller Gray Davis. On my left is Commissioner Stancell, sitting in for Director of Finance Tom Hayes, and my name is Leo McCarthy.

Do we have any minutes to approve from the last meeting? Go through that solemn ritual? Any objection to the minutes of the last meeting? If not, they're approved.

(No response)

CHAIR McCARTHY: Calendar Item No. 1.

MR. WARREN: Before we begin with calendar Item No. 1 there are just a few items, with your permission, I'd like to share with you?

CHAIR McCARTHY: Yes, Mr. Warren.

MR. WARREN: We have been requested by the Department of Finance to consider a further 5 percent reduction in the general fund components of our budget. This is on top of the 4 percent which is built into our current budget.

We will do so. We're undertaking that review

1 presently, but as you know, this follows a 10 percent reduction
2 in our budget last year, so if in the event the decision is
3 made to go with the 5 percent, that will result -- that will
4 mean a 20-percent reduction in the general fund budget over a
5 two-year period.

6 Given the budget realities it may be that we'll be
7 asked to cut even more, but we're moving on a 5- to 7.5-percent
8 range to see what effect that will have and we will report to
9 you and keep you advised of the progress of that.

10 Secondly, the SB 2040 implementation, the oil
11 spill responsibilities, the Department of Finance has approved
12 our BCP for full funding. It's contained in the May revisions
13 that the administration submitted to the legislature. It is
14 being presently reviewed by legislative committees. Mr. Trout
15 is not with us today in order that we could present a 2040
16 budget revision to the senate budget committee.

17 I must say that the Department of Finance approved
18 the budget as we submitted it for implementation of the
19 program, and we are very pleased with that confidence that they
20 expressed and we are implementing our responsibilities.

21 On Friday of this month, May 30th, in San
22 Francisco, the Commission will release the Public Trust Report
23 of the San Francisco Delta. Copies have been furnished and a
24 final copy will be submitted to you and made available to the
25 public at that time.

1 On AB 350, that's the Commission-sponsored
2 legislation establishing a California Rivers Parkway Program
3 for the state. That's out of the policy committee, it's before
4 ways and means.
5 We still have not heard from the administration as
6 to its willingness to support the legislation, but that option
7 still exists for it to do so in the event it so concludes.
8 And finally, Mr. Chairman and Commissioners, on
9 the proposal that's been mentioned in the press and even the
10 New York Times to settle the Mono Lake litigation, the proposal
11 was submitted to the administration on April 10th with the
12 request that it consider being the sponsor of the proposal.
13 We met again with the administration
14 representatives on May 7th, received generally favorable
15 comments at that time, and with the promise that we would hear
16 from them -- within two weeks we'd get to hear from them one
17 way or the other what they're going to do with that.
18 But nevertheless the proposal has such benefits
19 that it seems to be acquiring legs of its own and so there are
20 other initiatives that are underway in furtherance of that
21 proposal.
22 And that's all I have to bring to the attention of
23 the Commission at this time, I believe, with the executive
24 officer's report.
25 The first four items, Mr. Chairman and members,

are similar in nature. They represent efforts to meet the needs of various marinas at Lake Tahoe, the level of which has declined rather dramatically due to the drought.

Item No. 1 is to approve a limited term lease to install, place, and maintain temporary mooring buoys and a metal grid to accommodate boat-launching activities during the summer months at Lake Tahoe; and staff recommends approval.

CHAIR McCARTHY: Okay. Do we handle all four of these together?

MR. WARREN: Yes. Well, I guess we ought to take a vote on each one.

CHAIR McCARTHY: Any questions on No. 1? Audience comments on No. 1?

(No response)

CHAIR McCARTHY: Approved as recommended.

Two.

MR. WARREN: On Item No. 2 it's a similar lease to install, place, and maintain a 76-foot temporary floating pier and a 122-foot temporary heavy timber crib supporting the ramp. That's for High and Dry Marina, a very adequately and appropriately named facility it would seem to me given the circumstances.

CHAIR McCARTHY: Any questions on No. 2? Audience?

(No response)

CHAIR McCARTHY: Approved.

1 MR. WARREN: Item No. 3 is a similar lease for the
2 purpose of installing, placing, and maintaining a 315-foot
3 temporary floating pier and a temporary rail track to
4 facilitate boat launching.
5 Staff recommends approval.
6 CHAIR McCARTHY: Any questions?
7 (No response)
8 CHAIR McCARTHY: Approved.
9 Four.
10 MR. WARREN: Item No. 4 is a similar lease for the
11 purpose of placing and maintaining temporary mooring buoys to
12 accommodate as many as 41 craft using the marina during the
13 summer months, and staff recommends approval.
14 CHAIR McCARTHY: Any questions?
15 (No response)
16 CHAIR McCARTHY: Approved.
17 MR. WARREN: Item No. 5 is a maintenance dredging
18 project. It is to maintain the facility at a depth which has
19 already been approved.
20 There is no objection and staff recommends
21 approval.
22 CHAIR McCARTHY: Any questions on 5?
23 (No response)
24 CHAIR McCARTHY: That's authorized.
25 Six.

1 MR. WARREN: Item 6 is off calendar.

2 CHAIR McCARTHY: Seven.

3 MR. WARREN: Item 7 is another channel maintenance and

4 dredging request from the city of Berkeley, necessary to

5 accommodate the boaters using the facility at Berkeley Harbor.

6 Staff recommends approval.

7 CHAIR McCARTHY: Any questions on 7?

8 (No response)

9 CHAIR McCARTHY: The recommendation is approved.

10 MR. WARREN: Item 8, Seal Beach Gateway, Inc. This is

11 to authorize the delay of payment of continuing rent for a

12 maximum of 18 months to allow processing by the city of Seal

13 Beach of a revised environmental document based on recent

14 seismic findings.

15 The tenant has been cooperative and in full

16 compliance, and given a delay that was not due to any action on

17 his part, we felt that the suspension of the rental, based as

18 it is on a progressive rate, should be suspended to permit --

19 to accommodate this requirement.

20 Staff recommends approval.

21 CHAIR McCARTHY: Any questions?

22 (No response)

23 CHAIR McCARTHY: It's approved.

24 Ten?

25 MR. WARREN: Item 10, the State Lands Commission staff

1 has prepared emergency regulations to facilitate the
2 implementation of its responsibilities under SB 2040. The
3 regulations have been reviewed by the advisory committee and
4 they will remain in effect for 120 days and this will be --
5 these are the basic responsibilities to enable the staff to
6 undertake its responsibilities under the act.
7 CHAIR McCARTHY: Any questions on 10?
8 MR. WARREN: There is a speaker who wishes to address
9 this item, in opposition.
10 CHAIR McCARTHY: All right.
11 Mr. Ted Shetler, would you come forward, sir?
12 MR. SHETLER: My name is Ted Shetler. I'm here
13 representing ARCO Transportation Company. It's rather
14 unfortunate that we're saying we're in opposition to the
15 emergency regs.
16 I understand why the department needs emergency
17 regs to operate, but I have prepared some comments here which I
18 would be happy to leave with you.
19 It is our suggestion that it would be more
20 appropriate, since you have a memorandum of understanding with
21 the Coast Guard, that the emergency regulations would be
22 tailored to the federal regulations. If they're going to walk
23 hand in hand, the two should be compatible.
24 It's our position that you have exceeded in many
25 cases the provisions of the federal regulations, and perhaps in

1 some cases even exceeded the language in Senate Bill 2040. And
2 I've also pointed out, I believe that in some cases where a
3 facility is unmanned when there is not an oil transfer
4 occurring, that the regulations do not even address that
5 situation, and I believe it should.
6 I'd be happy to leave these comments with you.
7 It's our recommendation that staff perhaps consider these
8 changes and in fact revise the emergency regulations for your
9 consideration at a subsequent meeting.
10 CHAIR McCARTHY: Have you seen a copy of these?
11 MR. WARREN: I have not, but it's my understanding that
12 Mr. Gregory, the division chief, has seen Mr. Shetler's
13 comments, and I would like for him to respond.
14 CHAIR McCARTHY: All right.
15 MR. GREGORY: Mr. Chairman, Commissioners, I have had a
16 few minutes, 15 or 20 minutes, to take a look at Mr. Shetler's
17 comments.
18 Basically there are some requests for revisions of
19 definitions that we have placed in the rules and some changes
20 dealing with particularly access to marine facilities and
21 access to records of marine facilities. He feels that these
22 exceed the provisions of Senate Bill 2040.
23 We do not in fact believe that they exceed Senate
24 Bill 2040. There is no clear-cut definition other than we are
25 to prepare a facility inspection program and a regulatory

1 inspection and enforcement program for these facilities.

2 To do that we believe that we must be on marine

3 facilities and on the vessels at marine facilities and have

4 basically unrestricted and warrantless access to these

5 facilities.

6 Mr. Shetler believes that Senate Bill 2040 does

7 not provide for that. He believes that inspection on a regular

8 basis does not mandate immediate access at any time.

9 We believe that the regulatory program that we

10 must establish under the statute must require access to a

11 facility, warrantlessly and without notification.

12 He indicates that there are problems with the

13 access to records when the facility may be busy, in fact

14 conducting transfer operations. We believe that there is not a

15 problem there. We certainly are not approaching this in an

16 unreasonable way, and I think that he expects perhaps that we

17 will approach it in an unreasonable manner, in fact creating a

18 safety problem.

19 That's a matter of the way a program is

20 implemented and the way a program is actually conducted in the

21 field. We would not conduct a program that way; we are

22 therefore safety and pollution prevention.

23 MR. WARREN: I would suggest --

24 CHAIR McCARTHY: Let's stop on that point, if we may.

25 What is the wording that Mr. Shetler has asked you

1 to consider as to the timing of inspection of any records?

2 MR. GREGORY: Let me find the exact wording here. It

3 says:

4 "The access to records may be difficult at times.

5 Operating personnel do not have ready access to the

6 files when daytime hours are over. Safety could be

7 compromised if people were forced to show files during

8 these off hours."

9 There is no proposed language.

10 CHAIR McCARTHY: Well I know you act sensibly, but it's

11 not a bad request.

12 Isn't there some language you could use in the

13 emergency regs that would suggest that staff will seek the

14 records in a manner that will not place crew in jeopardy? It

15 seems like a reasonable request.

16 MR. GREGORY: Yes, sir, we could put some wording in

17 that regard in there.

18 CHAIR McCARTHY: Does that respond to the concern you're

19 raising at this point?

20 MR. SHETLER: Yes, sir.

21 CHAIR McCARTHY: All right, why don't you go ahead with

22 that.

23 MR. GREGORY: Further, we have in the emergency regs

24 required facility operators to provide us with notification of

25 transfer operations, advance notification. Mr. Shetler

1 believes this is not authorized by Senate Bill 2040.

2 He states that while Coast Guard Captains of the

3 Port and the federal regulations may require advance notice of

4 up to four hours, that is only under certain conditions;

5 whereas our proposed rules in fact require notification of all

6 transfer operations.

7 That's not exactly correct. Coast Guard

8 requirements for barge transfer operations, the Captain of the

9 Port may require four hours' advance notice. It is simply to

10 his discretion as to whether he requires it or not. There are

11 not certain specific requirements placed in the regulations in

12 that regard.

13 We believe that advance notification of transfer

14 operations is reasonable. It must take place for us to

15 properly schedule our operations. We in fact are receiving on

16 a voluntary basis advanced notice of all transfer operations

17 that are ocurring in major port areas in California today.

18 CHAIR McCARTHY: What's your reaction to that comment?

19 MR. SHETLER: Well the very last statement, I can't

20 really address, I mean if at least there's a volunteer effort

21 going on, so be it.

22 One of the things suggested in the -- not

23 suggested -- stated in the federal regulations is that you

24 could provide a monthly schedule to satisfy that requirement or

25 that the Captain of the Port may require. I think that would

1 be something akin to reasonable.

2 The fact that the terminal itself has to make a

3 notification of every operation, if we made that notification

4 at two o'clock in the morning let's say, I don't see what

5 purpose it really serves. We could have a transfer at six

6 o'clock and we'd be notifying you at two in the morning. It

7 just seems like we're adding work and it doesn't serve a useful

8 purpose in all cases. In some cases it may be very helpful.

9 We also have a facility in Long Beach that right

10 now I can't say it's dormant but we have made very few

11 movements. And if you look at the federal regulations, that's

12 what it's exactly intended for. It's that we've got something

13 that's not really operating on a continuing basis as it were.

14 If you in fact get ready to make that, then they would like

15 notification. I think that's a much more reasonable approach

16 to notification than just every movement.

17 CHAIR McCARTHY: Would you comment on that?

18 MR. GREGORY: Yes, sir. Our requirement, as the

19 emergency reg says:

20 "Unless the division and a terminal operator agree

21 otherwise, at least 4 hours but not more than 24 hours

22 prior to the initiation of any transfer notification --

23 or transfer operation, the operator of the terminal

24 where the transfer is to take place shall provide notice

25 of the transfer to the division."

1 We further state how it can be made by fax,
2 telephone, printed schedule and all.
3 This sort of notification is common throughout the
4 maritime industry. It's made through various parts of the port
5 industry and in fact does not constitute a tremendous increase
6 in workload for any of these operators.
7 Twenty-four hour advance notification, if we
8 receive it by a fax, typically we'd follow up with a telephone
9 call before we send out an inspector, to make sure that he's
10 not going to go to an empty facility or an empty dock.
11 The Coast Guard Captain of the Port's authority in
12 the federal rules is involved primarily with transfer
13 operations among -- by organizations or facilities or vessels
14 that have had a problem in the past that creates some
15 significant risk to the port area and therefore require a
16 specific four-hour advance notification of arrival -- or
17 four-hour advance notification of transfer operations.
18 CHAIR McCARTHY: How strict are we in -- It's 4 hours to
19 24 hours. How strict are we if it's done within 24 hours?
20 MR. GREGORY: We are not punching a clock on these, sir.
21 We merely threw a time frame in there so that we would avoid in
22 fact someone handing us a piece of paper that had a listing of
23 ships, saying these ships will call sometime in this year.
24 Printed schedules are frequently done that way,
25 but they are impossible to schedule a workload based on a

1 printed schedule like that, and that's primarily what this
2 notification procedure is for.
3 CHAIR McCARTHY: Is 24-hour notice a problem for your
4 company, Mr. Shetler?
5 MR. SHETLER: Certainly it's not a problem. We just
6 feel like that it's, it's an additional amount of work. We'd
7 prefer that --
8 CHAIR McCARTHY: What do you do now? What's the
9 practice now that you follow? Within what time frame do you
10 report?
11 MR. SHETLER: I'd stop at the marine terminal operators.
12 I can't speak to how it's working right now with State Lands.
13 I don't believe that we routinely are requested to make
14 individual notifications.
15 I believe we are presenting to the Coast Guard a
16 schedule-- that is my understanding -- monthly or however we do
17 it. I know it's not a yearly schedule. I understand Mr.
18 Gregory's comments in that regard. That would be at least more
19 receptive to what we think would be reasonable.
20 CHAIR McCARTHY: Well, but you can -- I assume you could
21 have changed your schedules.
22 MR. SHETLER: Absolutely.
23 CHAIR McCARTHY: You have a monthly list and what would
24 you do to notify our staff so that they could have the option
25 of making an inspection if they thought it appropriate?

1 MR. SHETLER: I'd assume that we'd update our schedules.
2 Let's say a weekly notification would probably be reasonable.
3 MR. WARREN: If I may just say so, that may be
4 reasonable for ARCO but it would not be reasonable for all
5 tankers because some tankers come in on a scheduled basis.
6 They're not all fleets. We could have -- I'm not sure that
7 other than what we have now is appropriate.
8 I would like to point out, these points seem to be
9 comparatively minor given the responsibilities here. These are
10 temporary regulations. They will be in effect for 120 days
11 only. If there are problems with their implementation these
12 problems can be identified and dealt with in specific language
13 when interim rather than emergency regulations are considered,
14 and they will prepared and submitted to you.
15 But I think for 120 days that perhaps these -- if
16 there are any that we could -- the industry could live with
17 frictions if there are frictions. We doubt it very much.
18 Unfortunately we don't have any -- we were not --
19 they did not appear before the subcommittee review. They've
20 given statements only in a general nature today. They don't
21 have specific language. They're dealing with regulations which
22 are essential, and I would suggest if I could that the
23 interests of the Commission might be served if we approve the
24 regulations with the recognition that they're only for 120 days
25 and that if there are any problems that develop, that they be

5

1 reported to us when interim regulations are considered.

2 CHAIR McCARTHY: In that 120-day period, do I understand

3 that what we will require is a 24-hour list?

4 MR. GREGORY: We will require at least 24-hour

5 notification. Not sooner than 4 hours, at least 24 hours.

6 CHAIR McCARTHY: All right, so they literally will not

7 be required within four hours after a decision on a transfer to

8 give notice to us?

9 MR. GREGORY: No, sir.

10 MR. WARREN: Actually, you know, frankly there's nothing

11 we can do. Even if they don't, we don't have -- It's just kind

12 of been going into it because a working relationship has to be

13 established because we're not going to serve them with a writ.

14 MR. GREGORY: The requirement is simply a notification

15 requirement. And I must say that ARCO is, has voluntarily

16 complied with us. They are providing us information on all

17 their cargo transfer operations, particularly in the Port of

18 Los Angeles Long Beach I can speak to.

19 CHAIR McCARTHY: Do you have any other comments, Mr.

20 Shetler?

21 MR. SHETLER: No, sir.

22 CHAIR McCARTHY: Any questions from the Commissioners?

23 (No response)

24 CHAIR McCARTHY: Thank you, Mr. Shetler.

25 MR. SHETLER: Thank you very much.

1 CHAIR McCARTHY: So there's one change you're going to
2 work on there.
3 MR. GREGORY: They will go forward as emergency rules as
4 they were written, approved.
5 MR. WARREN: We'd like to have them approved as written,
6 Mr. Chairman. That's submitted.
7 COMMISSIONER TUCKER: Do we have to renotice it if they
8 do change it?
9 MR. WARREN: Yes. And we already have -- the next
10 meeting is an urgency meeting on June 4th and notice for that
11 meeting has already gone out. So if we don't do it, it'll be
12 maybe at the end of June or early July before we could --
13 CHAIR McCARTHY: Do you have a sense of the
14 Commission -- of this Commission, if I could ask the agreement
15 of my fellow Commissioners -- on the issue of investigation of
16 books and other records under what circumstance they will have?
17 MR. GREGORY: Yes, sir.
18 CHAIR McCARTHY: All right, and that you will do it in a
19 reasonable manner so that you don't take crew away from any
20 other vital tasks?
21 MR. GREGORY: Absolutely.
22 MR. WARREN: We understand you'll chew us out if we
23 don't.
24 COMMISSIONER STANCELL: I assume that Mr. Shetler would
25 make it known to us if there is a serious problem.

1 MR. WARREN: That's right.

2 CHAIR McCARTHY: Do you have the Commissioners' phone

3 numbers, Mr. Shetler?

4 (Laughter)

5 MR. WARREN: Thank you for your vote of confidence.

6 CHAIR McCARTHY: Anything else?

7 COMMISSIONER STANCELL: We haven't had the vote yet.

8 CHAIR McCARTHY: That's right. All right, anything

9 else? The matter is before the Commission.

10 COMMISSIONER STANCELL: I move it.

11 COMMISSIONER TUCKER: Second.

12 CHAIR McCARTHY: The emergency regulations are approved.

13 MR. WARREN: Item No. 11, Mr. Chairman and

14 Commissioners, is to authorize the city of Morrow Bay to remove

15 an abandoned vessel which is a navigational hazard on sovereign

16 tide and submerged lands.

17 Staff recommends approval.

18 CHAIR McCARTHY: Any questions?

19 (No response)

20 CHAIR McCARTHY: Approved.

21 MR. WARREN: Item No. 12 is to approve an amendment to a

22 mineral prospecting permit to include exploratory drilling for

23 minerals. This permits porthole drilling only. The area may

24 be in the Coastal Protection Zone so there's a specific

25 provision that in the event the region is placed in the Desert

1 Protection Area that the permit be canceled.

2 CHAIR McCARTHY: Any questions?

3 (No response)

4 MR. WARREN: Staff recommends approval.

5 CHAIR McCARTHY: Approved.

6 MR. WARREN: Item 13 is to authorize the executive

7 officer to execute a right of entry to permit widening of

8 Highway 237 in Santa Clara County.

9 Staff recommends approval.

10 CHAIR McCARTHY: Any questions?

11 (No response)

12 CHAIR McCARTHY: It's approved.

13 MR. WARREN: Item 14 is off calendar.

14 Item 15, Mr. Chairman --

15 CHAIR McCARTHY: Just a minute before we begin Item 15.

16 Mr. Greg Lean has given me a notice of his

17 presence here on Items 1 and 2. I just want to acknowledge --

18 is Mr. Lean in the audience?

19 MR. KILEY: I believe he was satisfied with the

20 Commission's action and has gone home.

21 CHAIR McCARTHY: All right, Item 15.

22 MR. WARREN: Item 15, Mr. Chairman, will be presented to

23 you by Mr. Hight.

24 MR. HIGHT: Yes. Mr. Chairman, Item 15 is on the

25 regular calendar as well as the executive session. It would be

1 my recommendation that the Commission hear public testimony and
2 then adjourn to an executive session, since this is a matter of
3 litigation, to discuss it.
4 It involves the expansion of the Long Beach
5 Convention Center, and you have before you in your packet
6 letters from the Steamship Association of Southern California
7 as well as letters from the City of Long Beach and the Port of
8 Long Beach.
9 And I understand that the Steamship Association of
10 Southern California is here and would like to testify in this
11 item.
12 CHAIR McCARTHY: I have four slips; one from Mr. James
13 Hankla, the city manager of Long Beach; one from Mr. John
14 Calhoun, the city attorney who is here to respond to questions
15 if necessary; and then one from Mr. Tim Cameron, special
16 counsel for Long Beach Harbor Department; and then we have Mr.
17 George Marshall, Steamship Association of Southern California.
18 Do any of the Long Beach people want to testify at
19 this point?
20 MR. HANKLA: Mr. Chairman, we'd be happy to respond to
21 questions when it's appropriate.
22 CHAIR McCARTHY: All right.
23 Mr. Marshall? Welcome. Would you like to give
24 us your testimony?
25 MR. MARSHALL: I would.

1 CHAIR McCARTHY: How are you, Mr. Marshall?

2 MR. MARSHALL: Fine, Mr. Chairman.

3 I appreciate this opportunity in behalf of our

4 member companies of the Steamship Association of Southern

5 California who are made up of ocean carriers, terminal

6 operators, stevedores, and agents working primarily in the

7 ports of Long Beach and Los Angeles general area.

8 We have 53 member companies, 44 of which have

9 offices or terminal operations in Long Beach, and I appear

10 today, Mr. Chairman, in their behalf, as further comments to

11 our letters of April 19th and May 17.

12 The association is concerned. $80 million seems

13 like a lot of money to us. It also seems that from a moral

14 standpoint, as well as perhaps one of fact, a convention center

15 even in Long Beach isn't really port business.

16 As we understand the city charter, we believe that

17 port funds, port money, is to be kept separate from city money,

18 and that those funds, harbor funds, are to be used for the

19 operation, the maintenance, the promotion and furtherance of

20 port business.

21 Our members are just not so well-off that we can

22 let $80 million move over without asking some questions and

23 making sure that it really does have relevance to port

24 business. And that's really our concern.

25 Convention centers, it's no secret they're money

1 losers, however otherwise it might be attractive. This is not
2 something ordinarily that any of us would want to get involved
3 in. We're concerned about not only the steamship business on
4 the West Coast and the trend that it's been taking, but of
5 moving funds out.

6 We see that the Port of Oakland is having problems
7 now, and perhaps for the first time in many years this fiscal
8 year will show a loss. They too got involved with real estate
9 outside of the port, Jack London Square, and a convention
10 center of their own.

11 We notice up north in the Seattle area where the
12 Port of Seattle lost track apparently of what their real goal
13 was and didn't keep a modernized, active building constructive
14 port operation going, and they've lost a lot of business.

15 We look at New Orleans, another port authority,
16 suffering, involved also with the convention center.

17 These things concern us. We can't help but be
18 aware that there's something called Port Disney on the horizon.
19 I mean we're concerned, and that's what we bring here today are
20 those concerns, Mr. Chairman. We feel on behalf of our members
21 that this is too big an issue not to be challenged.

22 CHAIR McCARTHY: You've had conversations with the port
23 authorities, officials in Long Beach on this matter?

24 MR. MARSHALL: Yes we have, both through our members and
25 through a general meeting. We sought to understand each

1 other's positions better, and that's been in the past few
2 weeks. So we've had ongoing conversation.
3 CHAIR McCARTHY: And there has been no reconciliation of
4 any points of view here?
5 MR. MARSHALL: No there hasn't, Mr. Chairman. They have
6 presented their side and how they feel about it, and
7 unfortunately though, our members remain concerned that this
8 just isn't something port funds ought to be involved with.
9 CHAIR McCARTHY: Usually this Commission does not
10 replace the normal role of local port authorities unless what
11 they're doing is clearly outside the kin of Public Trust
12 Doctrine responsibilities that they must carry out even though
13 they were assigned this land once under state control many
14 years ago.
15 And we turned to the attorney general's office and
16 we turned to our own legal staff to try to understand whether
17 activities at any point go outside, are not reasonably related
18 to maritime purposes, and a full range of our obligations under
19 the Public Trust Doctrine. Perhaps your attorneys have made
20 you aware that that's the role of the State Lands Commission.
21 So that would be our focal point of examination.
22 MR. MARSHALL: I see.
23 CHAIR McCARTHY: Do you have anything else you want to
24 add at this time?
25 MR. MARSHALL: Well, I'd just like to add that we

1 reached out for this Commission and I've jumped at the
2 opportunity to appear because of our concern, Mr. Chairman, and
3 it doesn't seem right to us.
4 We appreciate the city's concern and their need
5 for money, but $80 million would build a substantial port
6 facility operation in Long Beach. In fact it would build two
7 nice small modern facilities, and that's the kind of
8 expenditures we think are proper for these funds.
9 CHAIR McCARTHY: Thank you.
10 Any questions by members of the Commission?
11 Commissioner Tucker.
12 COMMISSIONER TUCKER: What do they plan to spend under
13 the 2020 plan for port expansion, do you know?
14 MR. MARSHALL: No, I don't, but that's another big
15 expense coming up.
16 COMMISSIONER TUCKER: But isn't that still on track?
17 MR. MARSHALL: Yes, we believe so. We understand so.
18 COMMISSIONER TUCKER: So that I assume would represent,
19 as I understand it, a substantial expansion and improvement of
20 the port; won't it?
21 MR. MARSHALL: Yes, it's supposed to. Absolutely.
22 COMMISSIONER TUCKER: Thank you.
23 MR. MARSHALL: I'd like to add to that if I may though.
24 We're also concerned in our industry about port increases. We
25 expect to be hit with one this year. The Port of Long Beach

1 has not announced one but it's no secret that increases are
2 being planned in Oakland as well as in the Port of Los Angeles.
3 So since the Port of Long Beach already has a 5 percent edge in
4 rates over the Port of L.A. and does need money, we expect that
5 that also will come up to us later on in the year.
6 And we just wonder with the $80 million available
7 and knowing these other expenditures are on the horizon, why
8 such a rate increase was needed. Why does that money have to
9 move out? Why can't it, some of it, stay in there and offset
10 the planned increases?
11 CHAIR McCARTHY: Thank you very much.
12 MR. MARSHALL: Thank you.
13 CHAIR McCARTHY: Any of the spokespersons for Long Beach
14 want to comment?
15 MR. HANKLA: Mr. Chairman, thank you for the
16 opportunity. We'd be more than happy to address any questions.
17 We believe that we have had a fair sharing of information with
18 the representatives of the Steamship Association. We believe
19 that the parameters of the project are not quite as presented
20 to you by Mr. Winter, but we'd be more than happy to respond to
21 questions.
22 CHAIR McCARTHY: Any questions?
23 (No response)
24 CHAIR McCARTHY: Are there others? Mr. Warren, Mr.
25 Hight, do you have any comments on this?

1 MR. HIGHT: I think since it's a matter dealing with
2 litigation, if we adjourn to the adjacent conference room to
3 discuss the matter and then come back in open session, it would
4 be appropriate.
5 CHAIR McCARTHY: Is that suggestion agreeable to members
6 of the Commission?
7 All right, we'll be adjourned for a few minutes.
8 (Recess taken)
9 CHAIR McCARTHY: We'll reconvene this meeting of the
10 State Lands Commission.
11 I think it would be convenient to stress the 1974
12 agreement between the State Lands Commission and the Port of
13 Long Beach in settlement of a lawsuit at that time.
14 Mr. Hight, do you want to briefly describe that
15 litigation and specifically address the point of the agreement
16 which suggested that the function of the convention center in
17 Long Beach was a maritime-related activity?
18 MR. HIGHT: Yes, Mr. Chairman. You've already done an
19 excellent job for me.
20 In 1974 as a result of the purchase of the Queen
21 Mary and expansion of the convention center, there was
22 litigation which -- between the city of Long Beach and the
23 Lands Commission, which resulted in a settlement commonly
24 referred to as the Pacific Tariffs Agreement, and that
25 agreement provided that the convention center was a trust

1 asset, that the Lands Commission had review capacity over the
2 expenditures and types of events that would occur in the
3 convention center.
4 CHAIR McCARTHY: Okay, Mr. Marshall, you indicated you
5 didn't -- Where's Mr. Marshall?
6 MR. MARSHALL: Yes.
7 CHAIR McCARTHY: You indicated that you and your
8 colleagues were unaware of this agreement?
9 MR. MARSHALL: That's right, Mr. Chairman, we were
10 unaware of it. Now hearing it, we're also surprised too.
11 I just might add, since we're all friends here,
12 after thirty-five years in this industry, in five different
13 countries, I've never heard anyone tie a convention center into
14 our shipping business, but you know, we're always glad to
15 learn. I'm just amazed that it hasn't come up before to our
16 attention.
17 CHAIR McCARTHY: Well it is an interesting agreement.
18 I'll stipulate to that. But it obviously is relevant to the
19 discussion before us.
20 The State Lands Commission is responding to a
21 lawsuit filed recently, as you know, by the Port of Long Beach,
22 and we have asked the attorney general who represents this and
23 Mr. Hight, our own legal counsel, to enter into negotiations
24 with city of Long Beach authorities because we are objecting to
25 their practical elimination of our oversight responsibilities

1 in the matters involved.

2 Those issues are not resolved yet, though they're

3 under discussion, but I'm not sure the resolution of those

4 issues is really going to address in a useful way the

5 objections that you and your associates in the industry are

6 raising, which is that $80 million taken from you to expand the

7 functional use of the convention center does not seem to you to

8 be fairly related to maritime purposes.

9 At this point I would think you've got a couple

10 strikes against you on that issue, but the main comment to be

11 made here is that I'm not sure that issue is before us in this

12 State Lands Commission, given this 1974 agreement, that is, if

13 there does not seem to be a set of facts which suggest to us

14 that the Port of Long Beach by operating this convention center

15 is breaking the law, breaking the Public Trust Doctrine that

16 we're responsible for maintaining.

17 So our pursuit of these negotiations with the Port

18 of Long Beach, even if it's resolved, does not usefully address

19 your issues.

20 MR. MARSHALL: I see.

21 CHAIR McCARTHY: See my reasoning?

22 MR. MARSHALL: Yes, I do.

23 CHAIR McCARTHY: All right. On that happy note, the

24 Commission does direct our legal staff and request the attorney

25 general's office to pursue those negotiations and to give us a

1 report prior to the 31st of this month, and if the matter is
2 not resolved then we have already as a Commission indicated to
3 you that we wish you to pursue this litigation and our response
to it.
5 MR. MARSHALL: Yes, Mr. Chairman.
6 CHAIR McCARTHY: Any further comments coming from
members of the Commission?
8 (No response)
9 CHAIR McCARTHY: Thank you. This Commission meeting is
10 adjourned.
11 (Whereupon the meeting adjourned at 5:15 p.m.)
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CERTIFICATION

STATE OF CALIFORNIA)
) SS.
COUNTY OF VENTURA)

I, LAURA GULLETTE, hereby certify that the foregoing pages 1 through 29, inclusive, are a true and correct verbatim transcript of the proceedings as reported by me.

WITNESS my hand this 31st day of May, 1991, at Ventura, California.

Laura Gullette
LAURA GULLETTE

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