State of California

LITTLE HOOVER COMMISSION

Richard R. Terzian
Chairman

Mary Anne Chalker
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Past Chairman

Michael E. Alpert

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Jackie Speier
Assemblywoman

Stanley R. Zax

Jeannine L. English
Executive Director

Review of Governor's Reorganization Plan No. 1

March 1995

Milton Marks Commission on California State Government Organization and Economy

660 J Street, Suite 260 ▪ Sacramento, CA 95814 ▪ *tel* (916)445-2125 ▪ *fax* (916)322-7709

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March 23, 1995

The Honorable Pete Wilson
Governor of California

The Honorable Bill Lockyer
President Pro Tempore of the Senate
and members of the Senate

The Honorable Kenneth L. Maddy
Senate Republican Floor Leader

The Honorable Willie L. Brown Jr.
Speaker of the Assembly
and members of the Assembly

The Honorable James Brulte
Assembly Republican Floor Leader

Dear Governor and Members of the Legislature:

After reviewing Governor's Reorganization Plan No. 1 of 1995, which affects the State's energy, oil and recycling programs, the Little Hoover Commission recommends implementation of the plan with two modifications:

- The requirement that each two years the State will adopt an explicit energy policy that is the product of involvement by the new Department of Energy and Conservation, the Governor and the Legislature. Such a policy should guide and direct the actions of all state entities involved in energy matters.

- The addition of public representation on the new Energy Facilities Siting Board. This expansion of the board will ensure that siting decisions have input from those outside of Executive Branch agencies.

The Commission's recommendations are based on an analysis of information received from 30 witnesses during two days of public hearings, meetings with officials involved in the agencies, more than two dozens letters sent to the Commission and numerous interviews with people in affected industries.

The time constraints imposed by the reorganization process preclude an exhaustive study of existing programs and the affects of change. However, the Commission is guided by two principles it has long held: 1) Efficiency and effectiveness is maximized when similar functions are housed in a single point of authority, responsibility and accountability; and 2) a governor, who is elected to carry out his stated philosophy, should have the ability to organize the Executive Branch to suit his priorities for meeting the needs of the State's citizens.

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The following letter report, which begins with a background section on the reorganization process, addresses the three different areas affected by the reorganization plan. The key elements of Governor's Reorganization Plan No. 1 of 1995 are:

- ***Energy:***
  - The elimination of the Energy Commission and the placement of most of its functions in a newly created Department of Energy and Conservation.
  - The transfer of all existing divisions and functions of the Department of Conservation, except for recycling, to the new Department of Energy and Conservation.
  - The creation of the Energy Facilities Siting Board for siting responsibilities now handled by the Energy Commission.
- ***Oil oversight:***
  - The transfer of the current State Lands Commission responsibility for oil and gas drilling oversight to the existing Division of Oil, Gas and Geothermal Resources within the Department of Conservation, which will move to the new Department of Energy and Conservation.
  - The transfer of the marine facility oil inspection function from the State Lands Commission to the Office of Oil Spill Prevention and Response within the Department of Fish and Game.
- ***Recycling:***
  - The transfer of the Division of Recycling from the Department of Conservation to a newly reconstituted Integrated Waste Management Board that will have a full-time chairman and part-time members.

The report ends with a conclusion and appendices that include the Administration's narrative description of the plan (**Appendix A**), the Administration's estimation of cost

savings (**Appendix B**) and a list of witnesses at the public hearing (**Appendix C**).

The Reorganization Process

On January 27, 1995, the Little Hoover Commission received Governor's Reorganization Plan No. 1 of 1995. The submission of the plan to the Commission began a statutory process that is based on a constitutional amendment approved by voters almost 30 years ago.[1] That 1966 amendment said the Legislature could, by statute, grant the Governor the authority to assign and reorganize functions within the Executive Branch. A year later, the Legislature created such a statute.

The authority for the Governor to perform executive branch reorganizations is in Article 7.5, Section 12080 et. seq. of the Government Code. Under this law, the Governor may propose changing the structure of executive branch agencies for one of a variety of purposes, including promoting better execution of laws, reducing expenditures, increasing efficiency, consolidating functions according to major purposes and eliminating duplicative efforts. Any entity in the Executive Branch may be involved, with the exception of any agency whose primary purpose is service to the legislative or judicial branches or any agency that is administered by an elective officer. Specifically included within the purview of reorganization are bodies on which an elective officer serves as an *ex officio* member.

The reorganization plan becomes effective on the 61st day after it has been given to the Legislature unless either the Senate or the Assembly adopts, by majority vote, a resolution rejecting the plan. Actual statutory language to enact the reorganization is processed in the following year, but the reorganization is effective regardless of whether the follow-up statutes are enacted.

The Little Hoover Commission's role in the process is described in Government Code Section 8523. The statute requires the Governor to submit any reorganization plan to the Little Hoover Commission "at least 30 days prior" to submitting the plan to the Legislature. (Prior to that, the plan must be submitted to Legislative Counsel to draft in bill language.) The Commission has 30 days after the plan has been submitted to the Legislature to report to the

Governor and the Legislature its evaluation of the reorganization and any recommendations for changes. Once the plan is submitted to the Legislature, it may not be amended by either the Governor or the Legislature.[2] Theoretically, the Commission's public input process and evaluation allows an Administration to hear the arguments for and against the plan and to consider ways to modify the proposal before committing itself to a course of action in the legislative arena. With that in mind, the Commission has a policy of expediting its analysis rather than waiting for its final 30-day countdown to begin after a plan is submitted to the Legislature.

Prior to the energy reorganization plan, the Commission had evaluated 23 reorganizations since 1968, the most recent being Cal-EPA in 1991. Fourteen plans have been rejected by the Legislature and nine have become effective.

Despite the age and repeated use of the reorganization process, legal arguments were presented to the Commission that the process is unconstitutional, either in general or specifically in this case. Among the contentions raised were:

- ***The Legislature cannot delegate its authority to make or revise laws to the Governor.*** The California Constitution describes the separate duties of the different branches of government, including the authority of the Legislature to make laws. However, in 1966, the Constitution was amended to provide that the Legislature could authorize in statute a system whereby the Governor could "assign and reorganize functions among executive officers and agencies and their employees." The Executive Reorganization Act (Government Code Section 12080) was enacted in 1967 to implement the constitutional amendment. It retains a role for the Legislature by having legislators review any reorganization plan and prescribing a legislative veto process. In past cases when interpreting the constitution, California courts have said that if there is ambiguity and the Legislature has taken a focused look at the ambiguous provision and produced legislation, the courts will in general defer to the Legislature's wisdom (5Cal 3rd 685, 691).

- ***The statute is broader than the constitutional amendment provided for.*** This argument hinges on how one interprets the phrase "assign and

reorganize functions" in the constitutional amendment. Some argue that while the constitutional phrase restricts the Governor to moving boxes around on an organization chart, the statute specifically provides the Governor the authority to terminate the affairs of any abolished agency and to suspend acts of the Legislature.

- ***The one-house veto provision of the reorganization statute is unconstitutional.*** In 1982, the U.S. Supreme Court held that a similar congressional provision was unconstitutional under the U.S. Constitution in *INS v. Chadha* 462 U.S. 919 (1982). In 1990, the California Attorney General, in an unpublished opinion, said that while the same arguments in Chadha could be raised to challenge the state reorganization law, they would carry less weight since the delegation of legislative power for reorganizations in California is based directly on state constitutional language. Such was not the case in Chadha since the federal constitution has no such provision. In addition, the Attorney General pointed out that the state constitution is viewed as a limitation or restriction on the powers of the Legislature (*Pacific Legal Foundation v. Brown* 29 Cal. 3d 168, 180 1981), unlike the federal constitution, which is a grant of power to Congress. No case has been taken to court on this issue despite numerous one-house rejections of reorganizations over the years.

- ***The Energy Commission is not an Executive Branch agency but instead provides services to the Legislature or is an independent administrative agency.*** Most agencies, including the Energy Commission, are created to fulfill a policy mandate set by the Legislature. Some, like the Legislative Counsel or the Legislative Analyst, have a primary function of helping the Legislature do its job. They report directly to the Legislature and their employees are employees of the Legislature. The Energy Commission, however, is not one of those legislative service agencies. Its express function is to implement the Warren-Alquist Act and it is housed within the State's Resources Agency.

- ***The State Lands Commission is run by elected officials and therefore is not subject to reorganization.*** The constitutional amendment and the statute exclude agencies administered by elective officers. But the reorganization statute specifies that boards or commissions on which elective officers serve in an *ex officio* capacity are not excluded. This argument, therefore, turns on whether the State Controller and Lieutenant Governor (two of the three members of the State Lands Commission) are *ex officio* members. *Black's Law Dictionary* defines *ex officio* as "by virtue of the office." It further defines *ex officio* services as "services which the law annexes to a particular office and requires the incumbent to perform." While the statute creating the State Lands Commission does not expressly define the members as *ex officio,* the duties performed are not ones derived from their constitutional standing as elected officials -- nor are the individuals elected to the Commission. Instead, they sit on the Commission by virtue of the office they hold.[3]

The Commission notes that no court has ruled on the constitutionality of the reorganization statute and its multiple provisions. The Commission further notes that it is not the prerogative of the Commission -- nor within its expertise -- to decide questions of constitutionality. However, the Commission's obligation, under its separate statute, to review reorganization plans is clear. The Commission, therefore, has proceeded with its evaluation and recommendations without regard to the legal issues raised.

Energy

Finding 1: The creation of a department with a single point of accountability for energy and conservation issues and functions will enhance policy focus and provide budgetary savings.

The Governor's reorganization plan takes three steps with regard to energy structures: It eliminates the Energy Commission and the Department of Conservation; it creates a new Department of Energy and Conservation to perform the functions of the Energy

Commission and the Conservation Department; and it sets up an Energy Facilities Siting Board to handle the review and permitting function now performed by the Energy Commission. The Board is composed of the director of the Department of Energy and Conservation, the president of the Public Utilities Commission, the Secretary of the Resources Agency, the Secretary of Cal-EPA and the Chairman of the Air Resources Board. No programs are deleted or revised, but the Administration describes the proposed reorganization as "the first step in what we intend will be a top-to-bottom review of this State's energy management programs."[4]

The key arguments made by the Administration in favor of the plan are:

- ***Better accountability and coordination of energy policy:*** The department structure allows for a single director who is accountable to the Governor -- and through the Senate confirmation and budgetary process, to the Legislature -- for the implementation of administration policy and statutory mandates.

- ***Changes in the conditions that led to the creation of the Energy Commission:*** Because of a planned move to deregulation and competitive marketing for energy sources, many of the functions now performed by the Energy Commission are no longer needed. For instance, economics rather than regulation will keep utilities from overbuilding plant capacity and stringent air quality requirements will continue to encourage the development of alternative energy sources. Instead of retaining the present commission with its existing mandates, new approaches and new requirements may be needed for the State to have an effective energy policy.

- ***Budgetary savings:*** The elimination of 16 positions by abolishing Commissioners and support staff is estimated to save $1.35 million annually. Another 41 positions will be eliminated in duplicative management and administrative staff when the Energy Commission and the Department of Conservation are consolidated in the new department, for a savings of $1.82 million annually.

The key arguments made by the opponents of the elimination of the Energy Commission are:

- **The reorganization fails to address all of the energy policy players:** It is impossible to maximize energy policy coordination without addressing the long record of turf battles between and overlapping functions of the Energy Commission and the Public Utilities Commission (PUC). What is "broken" now in the energy policy arena will not be "fixed" by eliminating the Energy Commission. There is still a vital need for the information gathering services and other functions the Commission performs.

- **The department structure does not provide adequate public input and will allow staff to dominate policy.** Five full-time commissioners conduct frequent public hearings as part of their mandated process for decision-making and have the opportunity to develop expertise independent of staff-supplied positions and information. This allows the public and affected interests far more input into decisions than a department structure would. In addition, the staggered five-year terms of the five commissioners gives the Commission a long-term stability in decision-making that will not be matched by a single department head who serves at a Governor's pleasure.

- **The new Energy Facilities Siting Board will not have the opportunity to make fully informed decisions.** The siting board's membership is made up of people whose primary function and responsibility lies in other areas. The expertise developed by full-time Energy Commissioners will not be a factor when the siting board considers power plant applications.

- **A department can systematically ignore or place a low priority on mandates that the Administration believes are no longer necessary.** Although the reorganization plan does not change statutory mandates or eliminate programs, many opponents fear there is a hidden agenda of subverting the present, successful programs of the Energy Commission.

The arguments over how the State should carry out energy policy are not new, stretching back before the Energy Commission existed and hardly ceasing since its creation. The State Energy Resources Conservation and Development Commission -- better known as the Energy Commission -- was established in 1974 and given specific mandates by the Warren-Alquist State Energy Resources

Conservation and Development Act. Under the act, five Commission members with specific backgrounds are appointed by the Governor and confirmed by the Senate for staggered five-year terms.

The creation of the Energy Commission came in the wake of the first Middle East oil embargo and a strong push by utilities to construct multiple nuclear power plants. The State's economy was threatened by the specter of ever-rising oil prices if California did not begin to diversify its energy sources and develop alternatives. In addition, the State's consumers faced the possibility of paying, through increased energy rates, for unneeded power plant capacity if careful planning did not match energy supply and demand. Policy makers recognized the need for the State to take a strong hand in shaping energy policy and encouraging the development of alternatives to oil-based power sources. As a result, the Commission was created with following four mandates:

- Facilities siting and environmental protection.
- Technology development.
- Energy efficiency and conservation.
- Energy forecasting and planning.

The Warren-Alquist act is widely recognized as achieving several things: establishing the only true statutory "one-stop shop" for environmental and land use permits for large thermal power plants, incorporating all reviews, including CEQA, into a single process; preventing the excessive construction of power plants, which would be costly for consumers; promoting energy efficiency and conservation as a meaningful way to reduce energy costs and slow the growth of energy consumption; reducing dependency on fossil fuels and nuclear power; and fostering new-technology industries that provide jobs and other economic benefits to the State. The Energy Commission's programs and actions have been a model for other states, the federal government and other countries.[5]

Despite the praise, there are detractors as well -- although many focus on overall energy policy structure rather than the performance of the Energy Commission itself. For instance, some believe that the Commission unjustifiably favors some forms of alternative energy over others, such as methanol-fueled buses over natural-gas-powered buses. Others point out that Californians pay the highest electricity rates in the nation despite all the efforts of the Energy Commission to plan for energy needs and promote conservation. But the broader and more common

argument is that California needs to have a better handle on its overall energy policy as it moves into the 21st Century and as the energy industry moves to market-priced competition rather than regulated rate-setting. The criticism in this regard usually focuses on the overlapping responsibilities and conflicting approaches of the Public Utilities Commission and the Energy Commission. Many blame the State's high energy prices on the failure of the PUC to heed the advice of the Energy Commission over the years.[6]

Under the California Constitution, the Public Utilities Commission has broad responsibility for the economic regulation of energy, gas, telecommunications, trucking and water utilities. Statutes also give the PUC the authority to approve or disapprove plans for some energy generation and transportation facilities. One could argue that, on the surface, the Energy Commission gathers information and sets energy policy while the PUC merely sets rates. The rate-setting capability, however, very often has a greater impact on energy production and development than any amount of policy declarations. Knowledgeable observers say the existence of both an Energy Commission and a Public Utilities Commission has given the State a split personality on energy issues. These same observers say the PUC pays little attention to the work of the Energy Commission, preferring to perform its own calculations and studies, which in many cases duplicates efforts and wastes resources.

The divergence in policy where unity would be more helpful to the State has been demonstrated when the PUC and the Energy Commission have taken opposite stands on matters before the Federal Energy Regulatory Commission. Another example is the Energy Commission's statutory-required Biennial Report. While many consider the document the only explicit expression of the State's overall energy policy, it is routinely disregarded by the PUC and carries little weight with policy makers elsewhere, according to observers.

The desire to reform energy policy structures has been evident in both the 1980s and 1990s. A February 1984 Little Hoover Commission report found that the PUC's procedures are not designed for effective energy policy formulation; that the Energy Commission lacks the mechanisms to put its policy recommendations into effect; and that there is overlap and duplication between the Energy Commission and the PUC. The report called for increased communication and coordination between the two commissions, including a more formalized

mechanism for the PUC to be involved in Energy Commission functions. The Commission wrote, "The development of state energy policy only has purpose and meaning if the policy is meaningful and there exists a mechanism for its implementation."[7]

The call for improved coordination had little effect. Writing in *California Policy Choices* in 1990 in an article entitled "Electricity Regulation Reform," University of California professor Tim Duane said:

The failure of [the Little Hoover Commission's call] for improved coordination suggests that reorganization is now appropriate...Effective regulatory policy cannot be implemented if success requires support from a competing regulatory agency. Consolidating the two agencies would improve policy consistency and reliability, reducing a manageable source of uncertainty in resource planning. Continuing the present system could cost California ratepayers, the environment and the economy billions of dollars and irreparable harm through either unnecessary generation investments or future shortages.[8]

In 1990, the Legislature established a Joint Committee on Energy Regulation and the Environment to focus on the State's energy policy-setting mechanisms. A study completed for the committee by University of Southern California professor John Kirlin concluded that the State's energy policies and agencies are significantly fragmented. In addition, an integrated state energy policy is largely unarticulated. Both result in a lack of accountability and effectiveness.[9] Based on that study, the committee staff recommended, among other things, that laws be enacted to consolidate energy responsibilities in a single entity.[10] No legislative reforms along these lines were successful.

During the 1993 and 1994 legislative session, the Administration and various legislators made unsuccessful efforts to address these issues. Some legislators focused on reforming the operations of the PUC, which have come under criticism for being heavily influenced by utilities, and on requiring the PUC to follow policies set by the Energy Commission.

Last year, an Administration-sponsored Assembly bill proposed a far more extensive reform than is in the present reorganization proposal. The bill not only eliminated the Energy Commission but also extensively revised the requirements of the Warren-Alquist act and removed the PUC's authority over siting production and transportation facilities. At one point, the Administration also pushed for the elimination of the State Lands Commission rather than simply taking away its oil functions. The bill was killed in committee. An Assembly

committee analysis of the Administration-backed bill included the following criticism:

Many observers believe that PUC/Energy Commission competition and conflict, as well as the PUC's alleged overweening deference to protection of the status-quo, have given California a confused and, at times self-defeating energy policy. Many observers believe that any reorganization proposal should alleviate this problem first and foremost...

Many observers believe that the most serious obstacle to meaningful energy policy and program reform is the current law under which the PUC operates. They state that a series of mistakes by the PUC, mistakes that run contrary to the letter and the spirit of the Warren-Alquist Act, are responsible for the energy problems and high rates California is experiencing. Had the PUC followed the advice of the Energy Commission on a number of critical issues in the mid-1980s -- timely construction of natural gas pipeline capacity; timely expansion of our connections to electric grids in the West; limiting power purchases under uneconomic contract; and reducing or eliminating dependence on expensive energy resources -- California might have avoided or significantly reduced the impacts of high rates and uncertain energy infrastructure development.[11]

Although its reorganization plan does not address the PUC/Energy Commission conflict, the Administration has indicated that turning the Energy Commission into a department is a first step rather than a finished product. Under the reorganization plan, mandates for public input and open hearing processes remain intact and the appointing and confirming process is the same for both the commission and department structure of governance. Statutory mandates that certain functions be performed currently under direction from a five-member commission will still be performed under the direction of a department head.

Officials have stated that after the present functions are brought into a department structure, a thorough review of programs will be conducted and priorities set, including legislative revision or elimination of mandates if necessary. As they correctly point out, prior efforts over many years to deal with energy policy on a broader scope have not been successful. Moving away from the status quo with an initial reorganization can set the stage for meaningful reform and improved policy creation and implementation.

Oil

Finding 2: Consolidating similar oil oversight functions will eliminate duplication of activities and provide single points of contact for affected interests.

The Governor's reorganization plan takes two steps regarding oil oversight, in both cases taking away functions from the State Lands Commission and combining them with similar functions elsewhere in state government. One State Lands program, which provides oversight of oil drilling operations, would be folded into the Division of Oil, Gas and Geothermal Resources, now in the Department of Conservation but transferring to the new Department of Energy and Conservation. The other State Lands program, which focuses on oil spill prevention through pro-active inspection of marine terminal facilities, would be combined with the Office of Oil Spill Prevention and Response (OSPR) in the Department of Fish and Game.

The State Lands Commission has been overseeing oil drilling operations in its role of landlord for state sovereign lands since the Commission was created in 1938. Its mandate to create an oil spill prevention program is much newer; a 1990 statute created the Commission's program and OSPR in the Department of Fish and Game at the same time, establishing a 4-cent a barrel oil tax to fund the operations of both.

Addressing the oversight of oil drilling, the Administration makes the following arguments for transferring the functions to the new Department of Energy and Conservation:

- ***Overlapping functions:*** Under the present structure, the Department of Conservation supervises the drilling, operation, maintenance and abandonment of all oil and gas wells statewide, of which there are almost 95,000. Since it was created in 1915, the Department's mandate has been to protect the environment and worker safety. The State Lands Commission, as the landlord for State-owned land, administers leases that cover about 3,350 of the wells in the State. Their mandate is to maximize revenues for the State (through royalties and joint participation) as well as to protect the public's interest in the land.

Drilling companies that operate on state land must deal with both the Commission and the department, and inspectors from both oversee the drilling operations. The proposal argues that the process would be streamlined without loss of environmental protection if only one agency were in charge of such things as specifications for casings, well construction and environmental safety devices -- and that agency should be the one already performing that function for the rest of the wells in the State.

- ***Too broad interpretation of the word "administer:"*** The State Lands Commission has a necessary role of overseeing State-owned lands to ensure their protection and productive use. However, the Administration believes the Commission can most economically and efficiently "administer" these lands, as mandated in their statute, if they simply require in leases that all regulations set and enforced by other state agencies are met rather than creating their own set of lease requirements and then monitoring separately to see that they are fulfilled.

- ***Budgetary savings:*** The proposal includes $1.45 million annually in savings from the elimination of 16 positions through streamlining management and program operations when the State Lands Commission operations and Department of Conservation functions are combined. No activities are expected to be eliminated.

The key arguments made by the State Lands Commission for retaining the present system for the most part focus on their public trust mandate:

- **The State Lands Commission has the sacred public trust responsibility for protecting State-owned lands on behalf of the citizenry.** The Commission was created after public scandals in the late 1930s when valuable mineral rights on state lands were leased for a pittance through favoritism and kickbacks. Previously, state lands had been the responsibility of various departments headed by gubernatorial appointees. The Commission is composed of the elected Lieutenant Governor, the elected State Controller and the gubernatorial-appointed Director of the Department of Finance. The Commission argues that it is important to keep

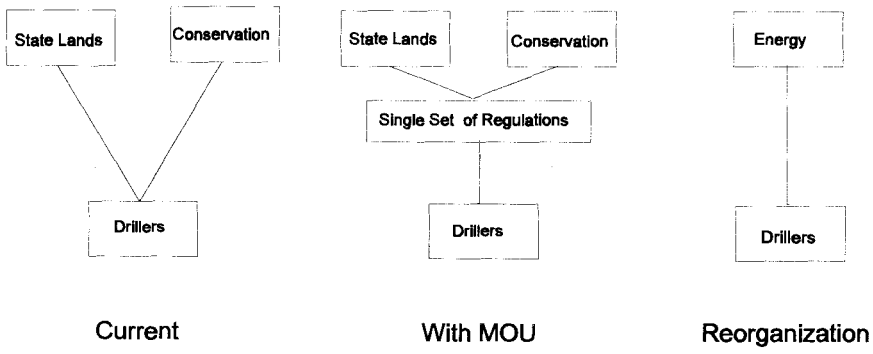
land use and oversight decisions in the hands of a balanced forum of elected and appointed officials.

- **The Commission is not a regulatory agency but instead is a land management entity.** The Commission maintains it is not trying to regulate environmental safety but instead is managing its leases for the most productive use of state resources and least damaging effect to the land. Rather than duplicating Department of Conservation efforts, the Commission feels it is taking added steps to ensure a higher level of protection.

- **Both the regulatory function and the landlord function need to be retained in separate entities.** The Commission argues that it would be a conflict of interest to have the same agency trying to maximize the productive use of resources that also restricts drilling through regulatory safeguards. The argument mainly focuses on prior proposals to eliminate the State Lands Commission entirely, but it remains pertinent because of the Commission's contention that depriving it of the staff it now has performing oil drilling oversight will damage its ability to carry out its landlord function in a meaningful fashion. Activities that the staff perform include studying ways to maximize yields from mineral resources, providing partnership services to drilling operations for increased royalties and assessing the value of the mineral resource available on a particular plot of land.

Neither the Administration nor the State Lands Commission produced any evidence that the stewardship of the land was better or worse where wells fell only under the sole oversight of the Department of Conservation. What is clear, however, is that in many instances inspections and requirements are duplicated. Drilling operators must obey two sets of regulations and respond to the demands of two separate agencies.

Reorganization is not the only solution to such a situation. A Memorandum of Understanding (MOU) that has been in the works for 15 years to diminish conflicts between the Department of Conservation and the State Lands Commission is near completion. The graphic below illustrates the Administration's concept of the difference the MOU and the reorganization can make:



Under the current arrangement, drilling operators must deal with two sets of requirements and two agencies. Once the MOU is signed, the businesses will benefit because they will only have to deal with one set of requirements. The State, however, will not gain any economy of operation until the reorganization takes place and the oversight is streamlined from both the business and the State's end.

The other program the reorganization affects is the oil spill prevention and clean-up activities that the State made a priority after the Valdez spill in Alaska. Created in 1990, the mandated activities are funded through a 4-cent tax per oil barrel for prevention and preparation and a 25-cent tax per barrel for actual cleanup and damages. The Administrator for the funds and the mandate for prevention, preparedness and cleanup were placed at the Department of Fish and Game; prevention and inspection activities for marine transfer facilities -- the platforms and docks where oil is unloaded from ships and barges -- were placed with the State Lands Commission, leaseholder for the 70 or so facilities.

The Administration makes the following arguments for combining the programs under the existing program, known as OSPR, at the Department of Fish and Game:

- ***Matching the mandates with the oversight responsibility:*** The Oil Trust Fund Administrator is charged with the responsibility for overseeing all of the mandated activities but currently he has no real authority over the program operated by the State Lands Commission.

- ***Putting the resources where they can be prioritized and spent effectively:*** The Trust Fund Administrator says his operation has 90 percent of the responsibility and only 75 percent of the funding. OSPR, with a budget of about $16 million, regulates the activities of 1,200 vessels and 450 facilities (including pipelines). The State Lands Commission, with about $5 million of the oil trust money, regulates about 70 of the 450 facilities covered by OSPR. The Administrator contends that the State Lands Operation is overfunded and overstaffed and that money saved by streamlining operations can be diverted into oil spill clean-up drills and other functions without degrading prevention activities. Sixteen positions are expected to be eliminated for a savings of $961,000 annually if the reorganization occurs. One example of duplicative staff: OSPR has seven people processing its 24 sets of regulations; the State Lands Commission has five people to handle two sets of regulations. At least three positions may be eliminated.

- ***Better enforcement:*** OSPR has the authority to issue criminal complaints, make arrests and perform other enforcement activities. As a result, its focus is more on enforcement and it relies on surprise spot checks, according to the Trust Fund Administrator. He believes, therefore, that his program is more effective in preventing spills.

- ***Consolidating operations makes "good government" sense:*** The Trust Fund Administrator describes the creation of the bifurcated program in 1990 as a political compromise to get the bill through the Legislature. It makes more sense to have all similar functions under the same program, he contends.

The State Lands Commission views the situation differently:

- **The State Lands Commission focuses on prevention while OSPR focuses on cleanups.** The Commission argues that spending money disproportionately for prevention makes sense since oil can never be entirely retrieved once it is spilled and the environmental damage is enormous. The Commission believes that its program prevents spills through frequent inspections that keep operators on their toes. They believe the program

would be decimated and funding shifted to clean-up drills, which they believe are a less- effective approach to oil spill damage, if the reorganization occurs.

- **The Commission's professional staff have extensive backgrounds in the oil industry and know how to enforce needed safety precautions.** The State Lands Commission says it is present for 40 to 60 percent of all oil transfers and prioritizes its efforts to focus on facilities and ships with troubled track records. Although it has no citation ability, the Commission obtains cooperation because businesses recognize that it is to their benefit to avoid spills. OSPR staff, on the other hand, tend to have law enforcement or Fish and Game warden backgrounds and have little understanding of the oil industry that is being regulated.

- **The Commission was given the program in 1990 because they already had the responsibility for overseeing marine transfer facilities at ports and platforms at sea, all of which are on state sovereign land.** Since the Commission is the landlord for the transfer facility operations already, it was natural to add inspection oversight to their duties, according to one legislative aide who was involved in the process. The Department of Fish and Game, which has expertise in water cleanup, has no particular experience in oil matters to prepare it for such a responsibility.

Individuals and businesses who provided testimony to Little Hoover Commission staff said they preferred to see only one regulatory body in the area of oil spill policy. Opinion on who that should be was split based on how each agency was viewed as carrying out its job. The State Lands Commission program was variously described as having hired experienced, professional staff that know what they are doing and hiring people who are too cozy with the industry they are regulating. OSPR was criticized by some for using former game wardens and law enforcement officials who know little about the oil industry but lauded by others for taking a hard-line approach to ensure regulations are enforced. The characterization of each program that emerged can be summarized as follows: The State Lands Commission runs a user-friendly, cooperative program that appears to be effective. OSPR at Fish and Game is widely acknowledged as an expert organization for oil spill

cleanup and is seen as a tough-minded, law-enforcement-focused organization that is also effective.

While the State Lands Commission prefers to view the two programs as separate functions with different goals, it is clear from testimony that the programs do overlap and create some confusion for industries regulated by both. The Coalition of California Independent Refiners and Terminals testified about conflicting regulations regarding work shifts and other matters that have caused refiners and terminal operators to rewrite manuals and reorganization operations at substantial cost with little, if any, change in safety levels.[12] Other testimony urged that any consolidation be accompanied by the continuation of the cooperative nature of the State Lands Commission program.

A persistent theme of those arguing to retain the oil spill prevention program at the State Lands Commission is that to remove it would injure the ability of the Commission to carry out its critical public trust duties. The current plan, which removes $8.5 million and 104 personnel years from the Commission according to the Governor's budget, effectively cuts the Commission's programs, staff and budget in half.

It is important to note, however, that the Commission has been guarding the public trust since its creation in 1938, the majority of the time without the mandate to carry out oil spill prevention activities. These were added to the Commission's responsibilities in 1990, along with a substantial non-General Fund revenue source in the form of a share of the Oil Spill Trust Funds. The State Lands Commission reports that its staffing level has remained stable at about 210 positions for the last 10 or 15 years, despite the successive General Fund reductions that have affected most state agencies in the past three budget cycles. The Oil Spill Trust Fund covers the cost of about 71 positions at the Commission.

Removing the oil spill prevention program will be a significant budgetary reduction for the State Lands Commission, but largely in areas that have been added to its mandate in the past five years. As Secretary Wheeler emphasized in his testimony:

Retained for the State Lands Commission is its public trust responsibility. Also retained is the State Lands Commission's role as a land and mineral owner exercising the State's public trust in mineral resource development and revenue generation. The intent of the Legislature a half century ago that these duties be exercised by a separate entity overseen by two constitutional officials and the Director of Finance is maintained.[13]

While the State Lands Commission argues strongly that prevention is an emphasis that should be retained in the oil spill program, there is no evidence that the prevention mandate would be lost if the program were combined at OSPR. The Administration's reorganization proposes no changes in program mandates but only in where the responsibility -- and accompanying budget allocation -- lies.

Recycling

Finding 3: Moving the beverage container recycling program to a revised Integrated Waste Management Board fulfills recommendations made by the Little Hoover Commission in 1994.

The reorganization plan transfers the beverage container recycling program, now in the Department of Conservation, to the Integrated Waste Management Board. In addition, the full-time, six-member board will be revised to be a part-time board with a full-time chairman. The elimination of 15 staff from the Board revision will produce a savings of $1.5 million annually, with an additional $2 million in savings from consolidation of duplicative activities now carried out by separate programs.

The Little Hoover Commission conducted an intensive study, including a public hearing, on how California handles its recycling goals and programs. The Commission issued a report in March 1994 that addressed restructuring programs and responsibilities. A key recommendation of the report was to move the recycling program from the Department of Conservation to Cal-EPA, either in a new department or under the direction of a revamped Integrated Waste Management Board.

Since the Governor's reorganization plan carries out a version of the Commission's recommendation, the Commission does not intend to revisit the issue in this letter report. Detailed information and comments may be found in the report, which is entitled "Beyond Bottles and Cans: Reorganizing California's Recycling Efforts."

Recommendations

Recommendation 1: Governor's Reorganization Plan No. 1 of 1995 should be allowed to take effect.

The proposed reorganization of energy, oil and recycling functions is expected to save the State approximately $9 million a year, an amount that would cover the education cost of almost 2,000 students, provide monthly stipends to more than 1,250 poor families or fund the Little Hoover Commission's entire budget 15 times over. But more important than the budgetary savings is the opportunity to align similar functions so that increased efficiency, effectiveness and accountability are achieved. Because the reorganization plan has the potential to achieve these goals, the Little Hoover Commission recommends that the plan be allowed to take effect, with modifications described below.

Recommendation 2: The reorganization plan should be amended to require that an explicit state energy policy be adopted every two years that will shape all energy decisions.

While statutes now require the preparation of a biennial report by the Energy Commission, the document does not carry the imprimatur of the highest level of policy makers -- that is, the Governor and the Legislature. As a result, the document can be, and at times is, ignored when critical energy policy decisions are made. The initial biennial report under the reorganization should address the top-to-bottom review of energy mandates pledged by the Administration and provide an effective structure for energy decisions for the coming decades. Subject to gubernatorial and legislative review, the report, updated each two years, should become the fulcrum for decisions by all agencies, including the Public Utilities Commission.

Recommendation 3: The reorganization plan should be amended to provide for public representation on the Energy Facilities Siting Board.

While some have contended that public input will be lessened under a department structure, the Commission notes that all statutory requirements for public hearings and an open process remain intact. Five commissioners rather than one department head may allow for more points of access for those with interests in energy policy, but under either form the appointing and confirming powers remain the same: The Governor appoints and the Senate confirms.

In addition, fears that statutory mandates will be ignored would appear to have neither more nor less relevance under a department or commission structure. Failing to comply with statutes invites lawsuits from any interested parties and budgetary sanctions from the Legislature, regardless of commission or department standing. In fact, under a department structure, the Governor's ability to deal with laxity is actually strengthened since he may replace a department head at his pleasure, while commissioners serve defined terms.

However, the siting of energy production facilities is a particularly sensitive decision that has long-term and dramatic impact on the public. The proposed structure of the new Energy Facilities Siting Board consists almost entirely of members whose main preoccupation is with other functions (Secretaries of Cal-EPA and the Resources Agency, the Chairman of the Air Resources Board and the president of the Public Utilities Commission). Adding public representation through a member or members whose sole focus would be siting decisions would provide enhanced public input, both in perception and reality.

Conclusion

From its beginning in 1962, the Little Hoover Commission's statutory mandate has instructed it to look for ways to improve the efficiency and effectiveness of state government programs. Long experience in reviewing programs has convinced the Commission that effectiveness and efficiency go hand-in-hand with integrated structures that house similar functions. The fragmentation that occurs when programs with the same goals are scattered among different agencies is almost always counter-productive.

Governor's Reorganization Plan No. 1 of 1995 may not address all of the necessary revisions to give California the best energy and resources policy in the future. But it

puts in place a structure that provides focus, accountability and cohesive functioning. While arguments have been made -- in some cases convincingly -- that different parts of the current structure are working well, the reorganization plan holds out the promise that energy, conservation and recycling efforts will be enhanced as the State moves into the new century. Comfort with the status-quo should not impede such an effort. As Resources Agency Secretary Douglas Wheeler put it in his testimony to the Commission:

Agencies of government are not structured for the bureaucratic convenience of those who may have mastered their complexities...An institutional conservatism often takes over when interest groups become overly accustomed to familiar government structures. The mere fact that interested parties may like things the way they are is not sufficient reason to retain governmental structures and functions that have outlived their time.[14]

The Commission believes that, in order for California's energy and resources policies to move forward, the critical first step of restructuring must take place. We therefore urge the Legislature to allow Governor's Reorganization Plan No. 1 of 1995 to take effect.

Sincerely,

Richard Terzian
Chairman

Appended to this report are letters filed by dissenting Commissioners.

Letters of Dissent

State of California

LITTLE HOOVER COMMISSION

Richard R. Terzian
Chairman

Mary Anne Chalker
Vice-Chairman

Nathan Shapell
Past Chairman

Michael E. Alpert

Alfred E. Alquist
Senator

Charles G. Bakaly, Jr.

Carl D. Covitz

Pier A. Gherini, Jr.

Lucy Killea
Senator

Angie Papadakis

Jackie Speier
Assemblywoman

Stanley R. Zax

Jeannine L. English
Executive Director

March 16, 1995

The Honorable Pete Wilson
Governor of California

The Honorable Bill Lockyer
President Pro Tempore of the Senate
and members of the Senate

The Honorable Kenneth L. Maddy
Senate Republican Floor Leader

The Honorable Willie L. Brown Jr.
Speaker of the Assembly
and members of the Assembly

The Honorable James Brulte
Assembly Republican Floor Leader

Dear Governor and Members of the Legislature:

I have voted No on the Governor's Energy Proposal relating to the Energy Commission for the following reasons:

1) There is general agreement that any Energy Reorganization must include the Public Utilities Commission (PUC) and result in an ongoing comprehensive energy policy for the State. The reorganization as presented will not accomplish this goal.

2) There is concern that the expertise of the Energy Commission staff will be lost to the State. I have heard no criticism about the performance of the Energy Commission or its staff, and there has been no precautions taken to preserve this expertise.

3) I believe the Legislature must create a joint legislative committee to participate with the Governor and Executive Branch in development of a comprehensive energy policy.

I have voted No on the State Lands Commission Reorganization because I believe the proposal is beyond the authority of the Commission and is unconstitutional on its face. I believe the Commission has acted improperly in not requesting a legal opinion of the Attorney General or its own legal counsel and I recommend that the Legislature reject this proposal of the Governor unless the Attorney General renders an unqualified legal opinion.

I also join in and agree with Senator Alquist's dissent to the Commission's action.

Sincerely,

Stanley R. Zax
Commissioner

Milton Marks Commission on California State Government Organization and Economy

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CALIFORNIA STATE SENATE

LUCY KILLEA
SENATOR, THIRTY-NINTH DISTRICT

COMMITTEES
CHAIR, FINANCE, INVESTMENT AND INTERNATIONAL TRADE
APPROPRIATIONS
BUSINESS AND PROFESSIONS
EDUCATION
INSURANCE
NATURAL RESOURCES AND WILDLIFE

SUBCOMMITTEES
CHAIR, BONDED INDEBTEDNESS AND METHODS OF FINANCING

SELECT COMMITTEES
CHAIR, SOURCE REDUCTION AND RECYCLING MARKET DEVELOPMENT
VOTING PRACTICES AND PROCEDURES
WOMEN IN THE WORKFORCE

COMMISSIONS
CHAIR, CORPORATE GOVERNANCE
CONSTITUTIONAL REVISION
STATE GOVERNMENT AND THE ECONOMY
STATUS OF WOMEN

March 20, 1995

Jeannine English
Executive Director
Little Hoover Commission
660 J Street, Ste. 260
Sacramento, California 95814

RE: **Minority Report to Governor and Legislature on Governor's Reorganization Plan No. 1 of 1995**

Please include the following when you transmit the Little Hoover Commission's report on the Governor's Reorganization Plan No. 1 of 1995 to the Legislature and Governor. The plan attempts to simplify duplicative services in several important areas. However, I believe the following should be considered before this plan is adopted:

CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD
I support consolidation of the Division of Recycling and the Integrated Waste Management Board, reduction of the Board's membership to five members, and providing that the Governor designate the chair.

However, the plan should reflect existing law which includes full-time members, has members appointed by both the Legislature and the Governor, and which requires one designated representative of industry, and one with an environmental perspective. This arrangement is reflective of the Legislature's concern about potential conflicts-of-interest which arose with the previous nine member, governor-appointed, part-time board.

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STATE LANDS COMMISSION
I am particularly concerned with the section of the proposal that would transfer the oil spill prevention efforts to the same office as clean-up operations at the Department Fish and Game. The objectives of these programs are quite different, and it is prudent for each agency to determine its own strategy and plans.

The State Lands Commission serves a vital purpose with independently elected constitutional officers serving as the Lessor of state property. It is inappropriate, if not unconstitutional, to transfer these functions to a department without further supporting evidence.

ENERGY ISSUES:
I appreciate that the Little Hoover Commission has included my suggestion to add a public member on the proposed Energy Facilities Siting Board. However, I believe there needs to be further consideration of the state's entire energy policy and how it should properly be administered (i.e. commission vs. department.)

There appears to be widespread support for consolidating many energy functions, but significant issues, including several currently being considered by the Public Utilities Commission, remain unresolved. This proposal does not adequately resolve them.

Sincerely,

Lucy Killea

LUCY KILLEA

Dissent to the Report on Reorganization Plan #1

March 22, 1995

Senator Alfred E. Alquist
Assemblywoman Jackie Speier
Commissioner Michael Alpert
Commissioner Stanley Zax

In the face of the rejection of specific legislation of most of the elements of this plan by the Legislature in 1994, the Administration has returned with an almost identical proposal, this time couched in terms of a questionable legal shortcut method known as Reorganization Plan #1. However, the thrust of the proposal is the same - the assumption by the Administration of much greater authority over energy policy in California without the safeguards of the existing system.

Aside from the appeal of some slight savings and concentrating more authority over this area of public policy, the Plan itself suffers from very serious flaws, and the approval by the Little Hoover Commission was done without adequate review of the following issues:

First: There is no examination or evaluation of how this Plan will result in a comprehensive energy policy for California.

Second: There is no conclusive evaluation of the legality of the Administration absorbing the functions of independent regulatory commissions (i.e., the State Lands Commission and the California Energy Commission).

Third: There is no analysis or evaluation of the pros and cons of the commission form of government vs. the departmental form of government for this area of public policy.

Fourth: There is no discussion of the appropriate role of the Public Utilities Commission in how California governs energy in California.

In our opinion, without addressing these fundamental issues, Reorganization Plan #1 should be disapproved by the Legislature.

Appendices & Endnotes

APPENDIX A

GOVERNOR'S REORGANIZATION PLAN No. 1 of 1995

Reorganizing State Energy and Related Functions

JANUARY 26, 1995

Introduction

The Governor's Reorganization Plan is a good government proposal which stems from this Administration's desire to streamline government, facilitate the coordination and implementation of the Governor's programs, and save money where possible. In pursuit of these goals, this Plan seeks to reorganize the California Energy Commission and related governmental functions as a first step in what we intend will be a top-to-bottom review of this State's energy management programs. The consolidation of State energy functions into a newly-established Department of Energy and Conservation and a new Energy Facilities Siting Board constitute the heart of this energy reorganization initiative.

When the California Energy Commission was created in the mid-1970s, the generation of electricity was heavily regulated by the Public Utilities Commission (PUC). Energy producers were proposing to increase ratepayer costs substantially by building several large new powerplants in the State. Since that time, an alternative energy industry has emerged throughout the State, and the PUC is moving toward an energy utilities program governed by market conditions rather than state regulation. With the move to market-based energy utilities, it is no longer necessary for the State to continue all the current functions of the Energy Commission. Consequently, the Administration proposes this Reorganization Plan as a means to effectuate needed changes in the State's energy functions.

A prime objective of the Governor's Reorganization Plan is to eliminate three areas of overlapping and duplicative energy-related functions in State agencies. First, that portion of the State Lands Commission's current portfolio which relates to oil and gas drilling and operation activities is transferred to the Division of Oil, Gas, and Geothermal Resources within the Department of Conservation. Both agencies effectively regulate oil and gas operations on State Lands resulting in dual permitting requirements for the same activity. Often, the State Lands "permit" mirrors the work that has already been done by Oil and Gas. Governmental efficiencies can be realized by combining these two functions.

Second, the State Lands duty to inspect marine facilities and related oil transfer operations at those facilities is transferred to the Office of Oil Spill Prevention and Response (OSPR) within the Department of Fish and Game. Both agencies are funded by the Oil Spill Prevention and Administration Fund. The Administrator of OSPR is accountable to the Legislature for all expenditures from this account. Merging the State Lands marine oil spill responsibility into OSPR will ensure the most efficient use of funds available. Moreover, it will provide for efficiency and assure a single point of accountability for meeting the Legislative mandates of the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act.

Third, the Division of Recycling in the Department of Conservation which has responsibility for administering the Beverage Container Recycling and Litter Reduction Act is transferred to the Integrated Waste Management Board. This will result in more efficient use of agency resources. For example, both the Board and the Division operate

toll-free recycling information hotlines and maintain databases. Transferring the Division of Recycling to the Board will consolidate existing waste management functions, combining policy expertise and efforts into a single entity.

Reorganization Plan: Short Description

The are four main facets of the Governor's Reorganization Plan. The first is to create the Department of Energy and Conservation within the Resources Agency. The Department of Energy and Conservation would consist of the Mineral Resources Management Division of the State Lands Commission and all current Department of Conservation functions, except for the Division of Recycling which would be transferred to the Integrated Waste Management Board. The second is to eliminate the California Energy Commission and transfer its functions to the newly constituted Department of Energy and Conservation. The third main facet is to create a part-time Energy Facilities Siting Board that would assume the current siting responsibilities of the Energy Commission. This Siting Board would be located in the Resources Agency and would be composed of the Secretaries for Resources and EPA, the President of the PUC, the Chairman of the Air Resources Board, and the Director of the new Department of Energy and Conservation. The fourth main facet consolidates oil spill responsibilities by transferring the Marine Facilities Inspection and Management Division of the State Lands Commission to the Office of Oil Spill Prevention and Response of the Department of Fish and Game.

Transferred Functions and their Origins

(1) Existing law, the Warren-Alquist State Energy Resources Conservation and Development Act, establishes the State Energy Resources Conservation and Development Commission ("Energy Commission") with prescribed membership, powers, and duties, to administer provisions of the Act dealing with energy resources in the State, including the forecasting and assessment of energy demands and supplies, research and development and the consumption and conservation of energy.

The Governor's Reorganization Plan would abolish the Energy Commission, create the Department of Energy and Conservation, transfer the powers and duties of the Commission to the Department of Energy and Conservation.

(2) Under existing law, there is in the Department of Conservation the Division of Mines and Geology, the Division of Oil, Gas, and Geothermal Resources, the Division of Recycling, and the Division of Administration, several other offices with discrete responsibilities and the State Mining and Geology Board.

The Governor's Reorganization Plan would transfer all functions of the Department of Conservation to the Department of Energy and Conservation, with the exception of the Division of Recycling which would be transferred to the Integrated Waste Management Board.

(3) Under existing law, the Energy Commission is vested with specified duties and functions relating to the siting and certification of the construction and operation of thermal powerplants, transmission lines, and other energy facilities.

The Governor's Reorganization Plan would create an Energy Facilities Siting Board in the

Department of Energy and Conservation and would transfer all energy facilities siting functions from the Energy Commission to the board, except as specified.

(4) Under existing law, the State Lands Commission is responsible for oversight of oil, gas, and mineral resource production on State-owned lands.

This Governor's Reorganization Plan would transfer the Mineral Resources Management Program ("MRMP") of the State Lands Commission to the newly constituted Department of Energy and Conservation.

(5) Under existing law, the State Lands Commission adopts regulations and policies for inspection of marine terminals and related oil transfer operations and reviews oil spill contingency plans.

This Governor's Reorganization Plan would transfer the Marine Facilities Inspection and Management Division of the State Lands Commission to the Office of Oil Spill Prevention and Response ("OSPR"), Department of Fish and Game.

(6) Under existing law, the Division of Recycling of the Department of Conservation is vested with responsibility for administering the State's bottle bill program.

This Governor's Reorganization Plan would transfer the Division of Recycling to the Integrated Waste Management Board.

(7) The Integrated Waste Management Board is currently a full-time board.

This Governor's Reorganization Plan would reduce IWMB to a part-time board with a full-time Chairman. This change will reflect the IWMB's evolution from an implementing to a status quo agency, requiring less attention. The proposal will result in a cost savings from reducing full-time membership of the Board without compromising important public policy objectives.

Objectives Achieved

Duplicative Regulation of Oil and Gas Production

This Governor's Reorganization Plan would eliminate the duplication of many duties of the State Lands Commission's Mineral Resources Management Program ("MRMP") which performs many of the same duties as the Division of Oil, Gas, and Geothermal Resources, in mandating similar testing and regulation of mineral resource extraction and production. The elimination of the duplication of staffing and duties by consolidating the MRMP with the Division of Oil, Gas, and Geothermal Resources will achieve real administrative efficiencies in the State's regulation of mineral resource operations.

Duplicative Oil Spill Prevention and Response Responsibilities

In transferring the Marine Facilities Inspection and Management Division of the State Lands Commission to the Office of Oil Spill Prevention and Response ("OSPR"), Department of Fish and Game, the implementation and execution of all State oil spill prevention and response programs will be consolidated in a single organization. Combining this function of SLC into OSPR will ensure the most efficient use of the Oil Spill Prevention and Respond Fund and ensure the highest priorities of the Lempert-Keene-

Seastrand Oil Spill Prevention and Response Act are accomplished.

Duplicative Recycling/Waste Management Functions

In transferring the functions of the Division of Recycling of the Department of Conservation to the Integrated Waste Management Board, all of the state's waste reduction, waste management, and recycling programs would be handled by a single entity. This proposal would eliminate overlapping recycling mandates, duplication of work and enable the State to achieve a coordinated, comprehensive approach to waste reduction, resource reuse and recycling.

Savings

Streamlining the governmental process by consolidating overlapping programs has many rewards, not the least of which are the dollar savings that result from eliminating duplicative staff positions. Analysis of a variation of this proposal in early 1994 estimated that this energy reorganization, when fully implemented, will allow approximately 170 positions to be eliminated for annual savings of almost $12 million.

Program Coordination

Achieving efficiencies in government is only one part of this Executive Governor's Reorganization Plan. This initiative is also designed to facilitate the coordination and implementation of the many state programs that touch on energy policy as well as waste management. This plan accomplishes this objective by folding the Energy Commission directly into the Resources Agency where its programs and policies can be better coordinated with other executive branch departments.

Energy policy issues are like environmental impact reports -- they arise everywhere in State government. For example, the Department of Water Resources is one of this state's largest energy consumers; the Department of Fish and Game has a keen resource management interest in the siting of energy facilities; CALTRANS already does a considerable amount of motor fuels-related work; CAL-EPA is focused on many issues, including air quality impacts from energy facilities and alternative-fuel vehicles; and Trade and Commerce, among others, is concerned with the economics of energy in this State.

These and other state programs stand to benefit from better coordination of this State's energy policy. By creating a new Department of Energy and Conservation that is directly accountable to the Governor, this objective is achieved in a way that we expect will produce synergistic benefits. This State conducts environmental policy, natural resource policy, and a host of other state policies this way, and there is no compelling reason why there should be an exception for energy policy.

Conclusion

As indicated at the outset, this Governor's Reorganization Plan is a good government proposal, but it is only the beginning. It is an essential part of the overall transformation in executive branch organization envisioned by this Administration. The goal of this plan and other changes is to consolidate like-functions, reduce costs and improve service. All of the above proposals are all consistent with the Governor's commitment to improve and simplify the operations of state government.

State agencies are established to administer a set of programs that the Legislature and the Governor believe are important to the people of California. These agencies are constantly evolving through the addition or cessation of new programs and responsibilities which may result from changes in statute, court decisions, or voter initiative. But, by the very nature of their public responsibilities, governments seldom change quickly enough to respond to new conditions, service demands, or market realities. Sometimes, they simply continue to do what they have always done and the organizations become outmoded. When this happens, as it has with regard to the State's energy programs, it becomes necessary to effect major changes all at once in both the organizational structure and duties so that the state government remains effective and cost-efficient.

Once this proposed energy reorganization is achieved, it is the Governor's intention that our energy program and policies be subjected to a thorough review. Programs that no longer make sense will be eliminated or updated and perhaps new initiatives will be added. More importantly and coincidental with the structural reforms that have recently been proposed by the PUC, the State's treatment of energy issues will be amended to reflect the emerging competitive energy market and other rapidly changing conditions. The adoption of the Governor's Reorganization Plan will serve as a springstep to comprehensive programmatic review.

Pursuant to Government Code §§ 8523, 12080 *et seq.*, the Governor's Reorganization Plan has been prepared in the form and language of a bill as nearly as practicable and is attached for submission to the Little Hoover Commission, the Office of Legislative Counsel and the Legislature in the time periods provided.

APPENDIX B

GOVERNOR'S REORGANIZATION PLAN
FULL YEAR SAVINGS

The Governor's Budget reflects six months savings from the reorganization only from the elimination of the Energy Commissioners and their staff and the Integrated Waste Management Board Members and their staff. Further savings from management, administrative and program duplications will increase that savings. We conservatively estimate a first full year savings, after consolidation into the new and restructured organizations, to be more that 104 positions and up to $9.1 million. These figures do not include savings that may accrue from a thorough program review. These savings will be primarily from special funds.

	Positions	Dollars
Abolish Energy Commissioners and their staff	16	$1,351,000
CA Energy Commission/Department of Conservation Duplicative Management and Administrative Staff	41	1,824,000
Oil Spill Prevention and Response Funded Staff Transferred from State Lands Commission Duplicative Management and Program Staff	16	961,000
State Lands Commission's Mineral Resources Staff to Department of Energy and Conservation Duplicative Management and Program Staff	16	1,451,000
Change 5 CA Integrated Waste Management Board Members to Part-Time/ Eliminate Their Staff	15	1,499,000
	104	$7,086,000
Additional Savings from Recycling/ Integrated Waste Management Board Consolidation		$2 Million
TOTAL ESTIMATED SAVINGS	110+	$9.1 Million

RA 2/14/95

APPENDIX C

Witnesses Appearing at the Little Hoover Commission Hearing
on the Governor's Reorganization Plan #1 of 1995

February 27, 1995, Sacramento

State Agencies

Douglas Wheeler, Secretary
Resources Agency

Charles Imbrecht, Chairman
Energy Commission

Michael Byrne, Director
Department of Conservation

Pete Bontadelli, Administrator
Oil Spill Prevention & Response

Robert Hight, Executive Director
State Lands Commission

Bill Wallace
Santa Barbara County supervisor

Honorable Gray Davis
Lieutenant Governor

Theresa Parker
Director of Finance Representative

Experts

John Herrington, former Secretary
U.S. Department of Energy

Robert Mussetter
former Energy Commissioner

Steve Rhoads, former Exec. Director
Energy Commission

John Kirlin
University of Southern California

Tim Duane, Professor
University of California, Berkeley

Clifford Graves, Chairman
Oil Spill Technical Advisory Committee

Energy Perspective

Tom Willoughby, Manager of
Governmental Relations, PG&E

Jerry Jordan, Executive Director
California Municipal Utilities Association

Karen Edson
Independent Energy Producers Assn

Richard Miller
Proven Alternatives

Emilio Varanini III
Marron, Reid & Sheehy

V. John White
Center for Energy Efficiency
and Renewable Tech.

February 28, 1995, Sacramento
Continuation of public hearing

Environmentalist Perspective

Gerald Meral, Executive Director
Planning and Conservation League

Michael Paparian
Sierra Club

David Goldstein
Natural Resources Defense Council

Oil Perspective

Richard Kreutzen
Western States Petroleum Association

Craig Moyer
Coalition of California Independent Refiners and Terminals

Private Sector

Larry McCarthy, President
California Taxpayers Association

Bob Raymer
California Building Industry Association

Public Comment

Kenneth Nittler, Enercomp Inc.
Bill Northrup, Independent Oil Producers Agency
Steve Baker, Aaron Read & Associates

ENDNOTES

1. Article V, Section 6, California Constitution.

2. While the law does not explicitly say plans may not be amended after submission, opinions from both the Legislative Counsel (March 17, 1969 Assembly Journal) and Attorney General (April 25, 1969 Assembly Journal) indicate that is the case.

3. Douglas Wheeler, Secretary of the Resources Agency, in March 3, 1995 letter to the Little Hoover Commission, page 3.

4. Governor's Reorganization Plan No. 1 of 1995, "Reorganizing State Energy and Related Functions," January 26, 1995, page 1.

5. Assembly Committee on Natural Resources analysis of AB 2468 (Conroy), May 9, 1994, page 4.

6. Ibid, page 6.

7. "A Study of the Organization and Coordination of Electric Energy Planning and Electric Utility Regulation in California," Little Hoover Commission, February 1984.

8. Tim Duane, "Electricity Regulation Reform," *California Policy Choices,* 1990, pages 224-225.

9. John J. Kirlin and Peter Asmus, "Energy and Environmental Policy Making and Regulation in California," February 5, 1991.

10. David L. Modisette, "Staff Recommendations for Legislative Action on 'Energy and Environmental Policy Making and Regulation in California,'" March 8, 1991.

11. Assembly Committee on Natural Resources analysis of AB 2468 (Conroy), May 9, 1994, page 6.

12. Craig Moyer, Coalition of California Independent Refiners and Terminals, in testimony to the Little Hoover Commission, February 28, 1995.

13. Douglas Wheeler, Secretary of the Resources Agency, testimony to the Little Hoover Commission, February 27, 1995, page 7.

14. Douglas Wheeler, op. cit., page 7.