

MEASURE D, PART II:

Is Oil Revenue At The Heart Of Charter Vote?

■ By **GEORGE ECONOMIDES**

Publisher's Analysis

“Oil that is. Black gold. Texas Tea.” If you're old enough, you may remember those words as part of the introduction to the early 1960s hit TV show, “The Beverly Hillbillies.”

Jed Clampett, played by former Long Beach resident Buddy Ebsen, and his family didn't understand the value of oil back then. The same cannot be said for Long Beach elected officials, who fully recognize the importance of oil in helping pay this city's bills.

Millions and millions of dollars are generated annually from local oil operations into the city's General Fund and other city funds. Just recently in fact, at the September 21 city council meeting, the Long Beach Gas & Oil Department transferred an additional \$1.2 million to the General Fund because “oil prices have trended slightly higher” than what staff had estimated (budgeted \$40 per barrel). This action occurred one week *after* the city council approved the budget for the new fiscal year that began October 1. It brought the department's total transfer of oil revenue to the General Fund to \$14.8 million for the fiscal year just ended – \$8.3 million more than budgeted!

Evidently, elected officials are not pleased. They want more. That's where Measure D comes in, as mentioned in the story in the Business Journal's September 14 issue (available online under archives at www.lbbj.com).

There are two items related to Measure D on which Long Beach voters will cast one vote on November 2.

The first item, discussed in detail in the September 14 story, concerns changing the formula by which the city's Tidelands Operating Fund annually receives money from the Port of Long Beach. Instead of transferring 10 percent of the port's *net income* as it has since 1995 (totaling near-

ly \$160 million), Measure D alters the formula through a change to the City Charter so the port transfers 5 percent of *gross operating revenue*. While no detailed analysis has been prepared to show the difference in dollars between the two formulas and, more importantly, the impact on the port, it is expected the change would, at a minimum, provide the city a few more million dollars annually.

One of the reasons the mayor and seven of the nine councilmembers want the new formula used, is that some city officials are convinced that port officials are not providing accurate information in determining how many dollars are transferred annually. No one has said that publicly, but it's easy to read “we don't trust you” between the lines. By using a formula based on gross operating revenue, city officials will no longer care what the port's net revenue is.

That distrust is unfortunate and was stoked further at the August 3 city council meeting when the mayor and several councilmembers used the words “the culture at the port.” And this despite that over the years, harbor commissioners have approved all financial requests from the city council.

The five-member Long Beach Board of Harbor Commissioners has the option – and still would if Measure D passes – of denying the transfer if it feels the money is needed for port projects. This has not occurred in the past, and most local political observers agree it is doubtful commissioners would say “no” since they are nominated to the position by the mayor and approved by the city council – and can be unseat on any Tuesday night by five votes of the council.

The commissioners are on record unanimously opposing a change to the transfer formula, but they have not taken a position on the ballot measure. (For more on how this part of Measure D was determined, and the timeline as to how it came about, see accompanying story, “City Auditor Clarifies Timeline.”) In fact, very little public discus-

sion has occurred on Measure D and virtually no information has been presented other than what is in the election pamphlet.

On the one hand, elected officials, commissioners and city employees are restricted in what they can say or do regarding a ballot measure (refer to adjacent article, “Election Laws & Proposition D”), on the other hand, the less information available for voters the more likely they may pass the measure based strictly on the ballot language and the supporting argument. If, however, they do not read the argument in favor, voters may misread the ballot language (“... changing the formula from 10% of net income to 5% of gross operating revenues . . .”) thinking the port is trying to send *less* money to the city and vote against the Charter change. Readers might be surprised that many people do not understand the words “net” and “gross.”

Because of the way the measure was rushed by the mayor and councilmembers to get it on the ballot, with virtually no debate and no analysis as to the impact on the port, an argument against Measure D was not filed. The city council placed it on the ballot at its August 3, Tuesday night meeting (with the city attorney making changes to the final wording during that meeting), and the arguments had to be filed by that Friday. There was little time for opponents to analyze the language in the measure, get together to discuss their opposition or gather data to back up possible arguments. This rushed process has been used previously by city officials, and its intent appears to be to squash opposition. Voters deserve better from their elected officials. Voters deserve to have pro and con arguments on any measure so they can make an informed decision.

While there is some consternation within the international trade industry and among credit analysts about altering the transfer formula, the major concern is about the second part of Measure D. That part relates to port oil revenue. Lots and

lots of oil revenue. An estimated \$120 million over the next five years.

According to city officials, changing language in the Charter related to oil revenue is not a big deal. Whether it's the mayor, the city attorney's office or city councilmembers, they contend that they are simply clarifying language in the City Charter to avoid future confusion.

To address this part of Measure D, the Business Journal invited Chris Garner, director of the city's gas and oil department, to answer questions. He was joined by City Attorney Bob Shannon, Principal Deputy City Attorney J. Charles Parkin and Curtis Henderson, manager of the gas and oil operations bureau. Following is part of the 90-minute Q&A with those gentlemen.

Measure D Q&A

LBBJ: About 10 years ago or so, there was a separate department of oil properties, correct?

Garner: Yeah, we had Long Beach Gas, and oil properties – two different departments. Then we went to Long Beach Energy, which did not include oil properties at first, it included gas, fleet, refuse, street sweeping, towing and SERRF [Southeast Resource Recovery Facility]. The director of oil properties was retiring so [then-City Manager] Jerry Miller asked me to [take] over on a temporary basis. [Eventually it] made a lot more sense to combine [oil and gas]. We moved towing, fleet and refuse to the public works department. . . . We kept SERRF because that was energy . . . so that became the gas and oil department.

Henderson: It was officially combined, I think, in October 2005.

LBBJ: What are the responsibilities of the department?

Garner: There are three main business units. One is the gas utility, which is a full service gas utility, serving both Long Beach and Signal Hill. We service about 150,000 customers in total, the 5th largest municipal gas utility in the United States, and the largest municipal gas utility in California. The only full service municipal gas utility in Southern California. . . . And then the oil side. We're in charge of all the oil operations that are connected with the city. We handle the trust functions for the State of California for the offshore.

LBBJ: So you're in charge of everything in the city that has to do with oil, or it goes through your department?

Garner: Yes

LBBJ: How long have you been with the city?

Garner: Twenty-six years. I've been with gas utility since '87. . . . I took over the department in 1998.

LBBJ: Most people know Long Beach has oil, but where exactly is it? Is most of it along the coast? There's the Wilmington Field. We've got the oil islands. There's something called Upland oil. How does that all work?

Henderson: The biggest player in Long Beach, the Wilmington Oil Field, stretches approximately from the city of Wilmington, all the way to the Orange County line. It goes as far north as Anaheim [Street] and it doesn't quite go all the way out to the breakwater. . . . And then the other fields of Long Beach are the Long Beach Oil, or Signal Hill field, which is underneath the city of Signal Hill but also is on both sides of it. . . . And then there's a bunch of other smaller fields [spread around the city].

LBBJ: So the biggest producing field is Wilmington?

Henderson: Wilmington field produces approximately 35,000, 37,000 barrels of oil a day.

LBBJ: And the oil islands . . .

Henderson: Are on top of the Wilmington Oil Field. They are on the eastern extension of it.

LBBJ: And the areas within the Port of Long Beach are part of the Wilmington Field?

Henderson: That's the western part.

LBBJ: How many active wells do we have in the city?

Henderson: In Wilmington, it's about 2,000 active wells.

LBBJ: So the 2,000, roughly, are in the Wilmington Field, and part of those are in the four oil islands [known as THUMS – originally named for Texaco, Humble, Union, Mobil and Shell oil companies; later purchased by ARCO/BP and now owned by Occidental Petroleum. Oxy purchased THUMS Long Beach Company in 2000, which operates the oil islands, and in 2006 it purchased the Tidelands Oil Production Company, which operates the West Wilmington Field].

Henderson: About 1,300 hundred on THUMS side and 700 on West Wilmington, or Tidelands, oil side.

LBBJ: What about the Union Pacific area [within the port]? How many active wells do we have there?

Henderson: I don't really differentiate between Union Pacific and what Tidelands Oil Production Company is under contract to operate; it's all one big area.

LBBJ: In the 2011 budget – this is from the gas department section – it lists key accomplishments for fiscal year '10, and down here it says "operations consists of over 1,750 active wells producing 35,000 barrels of oil per day." So that's citywide, right? It's everything you've mentioned less what you would be in charge of if Measure D passes.

Garner: No, that includes Measure D.

LBBJ: Okay, so, right now, you are over-seeing all the wells in the city?

Garner: Yes.

LBBJ: Whether they are in the port district or not?

Garner: Correct.

LBBJ: Another thing that's a little confusing is Tidelands. The definition of Tidelands – is that everything below Ocean Boulevard or below Seaside Way? How do you describe Tidelands?

Garner: Well it's a legal definition that has been in place since the 1950s?

Parkin: Since 1964, Chapter 138 created the legal description of the Tidelands boundary, which in the downtown area does run along Seaside, and then runs parallel, basically along the bluffs all the way along the shoreline.

LBBJ: The bluffs are part of the Tidelands?

Parkin: No. Just at the base of the bluff.

LBBJ: The reason this is important, is because the money from the port can only be used in the Tidelands. We want to make our readers understand the boundaries, or rough boundaries of where the money can be used.

Parkin: It can be used in the Tidelands or the Tidelands contiguous if it benefits the Tidelands. . . . The use of the Tidelands funds, as you've mentioned, is restricted to appropriate Tideland uses.

Shannon: The operative term is does it *benefit* the Tidelands? Don't get too restrictive in terms of does it have to be in the Tidelands.

LBBJ: So when the port gives its annual 10 percent transfer, it goes in the Tidelands Fund, right? And then that in turn is used to clean the beaches, the Marinas . . .

Parkin: It could be an appropriate use.

LBBJ: Convention center?

Parkin: The Convention Center . . .

LBBJ: Anything in the Queensway Bay?

Parkin: The [Belmont Plaza] pool, marine stadium . . .

LBBJ: There was an action taken by the city council to put money from Tidelands into the Naples seawalls? So that's Tidelands too?

Parkin: That's Tidelands; the water is all

Tidelands. So the boundaries are the seawalls.

LBBJ: So Naples Islands' are part of the Tidelands?

Parkin: No, residential would be excluded from the Tidelands.

LBBJ: Just the seawalls?

Parkin: Just the seawalls.

LBBJ: The Tidelands is statewide right?

Parkin: The Tidelands came into existence [in] early 1911 . . . the state . . . granting to Long Beach the Tidelands for the purpose of developing a harbor. There were five or six grants in and around that time – Oakland, San Francisco, San Diego, Long Beach – and then there were subsequent grants that expanded the use and the boundary area to Long Beach and so that's where these restrictions are kept in the property title to the city.

LBBJ: Has there ever been a situation where the state lands commission [which oversees the Tidelands area] has said to the city this is an illegal use of Tidelands money? Or of harbor money in the Tidelands?

Parkin: Yes. . . . There was litigation over the Queen Mary and the use of the Tidelands Funds for fixing up the Queen Mary when [the city] purchased it in the '60s. . . . I think they disputed whether that was an appropriate Tidelands use.

LBBJ: So, when the harbor commission gives thousands of dollars to local groups, like the municipal band . . . some of these groups are not in the Tidelands area, how do they get around that?

Parkin: I'm not sure they're getting around it.

Shannon: They're not getting around it, [because] of the term *benefit*, that's the distinction I tried to make, between it not having to benefit some property within the Tidelands as long as it benefits the Tidelands. So the theory is that by giving to these community groups, it's a benefit to the harbor and therefore to the Tidelands.

LBBJ: And no one has come down from the state and said, "Hey, this is a problem?"

Shannon: No, the state land's is very diligent, shall we say, in observing what the monies are used for and they haven't hesitated in the past to speak up when they thought it was inappropriate.

Parkin: A recent example of where they've spoken up is free days at the Aquarium. The Aquarium wanted to do a promotion just like Disneyland does where it says if you live in Long Beach come show us your ID and you get in free. Well, that would be prohibited under the

Tidelands granting statute because that discriminates against Long Beach residents versus other citizens of California. So, if they want to do a California free day? Sure. But you couldn't do a Long Beach citizens free day.

LBBJ: Is there an audit done of the Tidelands area?

Shannon: State lands would have the right to do an audit if they chose.

LBBJ: Do we know if state lands has done one in the recent past? Do we know if they've ever done one?

Shannon: I don't know of any audit.

LBBJ: I guess that means they're happy.

Shannon: I would think so. If they had any concern, I'm sure they would act accordingly.

LBBJ: Who in the city oversees the Tidelands Fund?

Garner: [The city's] financial management [department] oversees it right now, but it goes for the marinas and so on, and so public works is involved, parks and rec is involved, we're involved . . .

LBBJ: So several departments are involved and financial management tracks the money and makes sure it's spent right. When was oil was found in the port?

Parkin: 1936.

LBBJ: So do we know from the past 75 years, has all that oil money stayed within the harbor fund?

Parkin: There's a whole history of the use and fighting over the money of oil dating back to probably 1936. There was a period of time where the city was awash in oil money and so began using some of that for streets, libraries, parks etc., which generated litigation, which generated more litigation and more legislative actions and fast forward to basically Chapter 138 which resolved a lot of the money issues and limited the amount of money from the oil field that came to the city.

LBBJ: So in the early part of the port history, as far as oil goes, there wasn't a state lands commission overseeing it or restrictions – like there are today – on how to use the money?

Parkin: That's correct.

LBBJ: And because of the litigation you referred to, it sounds like they came up with that section to restrict the money.

Parkin: That's true. Right, I mean, that was the argument that the funds were always restricted because it was Tidelands money granted to us in trust, but then there was legislation that was passed that allowed the city to use, I think, 25 percent or 50 percent of the oil revenue for non-

Tideland purposes and that was approved by the legislature. And then there was the Mallon litigation in the 1950s that said, "No, you can't use any of this money for non-state benefit purposes." After [that] Chapter 138 was passed in 1964, which is basically what we're still using today, with the exception of some recent legislation in 1991 and I think 2007 or 2008 on what we call optimized water flood agreements, which redistribute some of the wealth.

LBBJ: So over the history of oil in the harbor district, since 1936, the gas department or whatever department, has had the authority to oversee oil port operations?

Shannon: No, 1964 was the correct date.

LBBJ: So 1964 to present.

Henderson: Prior to that, the harbor department was actually in charge because the only oil operations at that time were in the harbor district. So it wasn't until '64 that it changed and that control came under the city council under oil properties.

Shannon: 1964 created Article 13, which is the article in the Charter that relates to the department of oil properties and those are the two relevant sections – one in Article 12 and one in Article 13 – that reflect the changes that occurred in 1964. The most significant being 1303 which, by its title, explains everything: "Authority over oil production transferred to city council." That's 1303. Authority over oil production including the harbor very specifically articulates that it's overseen by the city council and no longer overseen by the harbor commissioners. And then Section 1203D, which I alluded to at the beginning of this conversation, which gives the harbor commission extensive authority – three pages worth of authority – over the lands within the harbor district except for the administration of oil operations in the harbor.

Editor's Note: Before the Q&A began, Shannon made the following comments relating to the Business Journal's story in the September 28 edition:

Shannon: When I first read it, I thought it was misleading and maybe you didn't intend it quite the way it read. The charter change, Proposition D, does not change fundamentally Article 12 as it relates to oil operation; it simply clarifies. And so when I said in the impartial analysis, what I meant was that Article 12 now, as it exists, the Charter amendments that occurred in 1964 and that exist in the Charter right now, removed – removed in the past tense – from harbor jurisdiction authority over oil

operations. I want that to be clear. This proposition does not do that, it simply clarifies, it does not remove. . . .

I put in front of you, current Charter Section 1203D. As you can see, one of the interesting things about the delineation of the harbor's duties and powers, it goes on and on and on, but, in Subsection D, in the midst of all of this authority that they have over that geographical area as it currently exists right now, 1203D says that it has control and jurisdiction, except as to those lands or parts thereof within the district that may be used for or in connection with the drilling for . . . oil; that's the Charter as it exists right now. That's the point that I want to make very clear. The proposition does not change that. It clarifies it.

LBBJ: Since you have been overseeing this, do you sit down with harbor staff or commissioners and chat about oil operations once or twice a year? How does that work?

Garner: Yes, we used to give annual presentations to the harbor commissioners on the oil operations and obviously we had more frequent discussions with city staff over there. Because we have to coordinate with them as far as property and they were getting the revenue, and so they were obviously very interested in that and it went both ways. When oil prices were low, they were concerned about some of the issues we had with our contractor and they got very involved in that aspect, because they were worried about the expenses outweighing the revenues. And then when oil prices were high, obviously quite a bit of oil revenue [was] generated.

LBBJ: The city auditor's analysis of the harbor shows that the port lost money in oil operations for a few years. In 2007 it was a \$21 million loss because of environmental remediation and so forth.

Garner: In my mind, that's really an accounting function. What costs were allocated towards it? You look at the pure oil operations; it certainly has been making money.

LBBJ: How would you consider your relationship between the department and the port right now?

Garner: Actually, I meet with [Port Executive Director] Dick Steinke all the time, and my relationship with Dick is fantastic. We have some issues from the staff standpoint, with this very issue of who controls the oil. There's been, over the years, continual battles over that. We were very happy to hear that the city attorney wanted to clear up this language because it's caused some issues.

LBBJ: So, you've had the authority over the years to tap into port oil money for the Tidelands. But you haven't done that in the past, right? You haven't said, "Let's take the oil money and put it in the Tidelands?"

Garner: Not the harbor portion.

Shannon: I'd like to change the conceptual spin a little bit. You got a universe called Tidelands. The harbor is part of that universe. I'm not going to put a percentage on it, but the harbor is part of the Tidelands so that in relevant fashion, the relevant revenue funds are the Harbor Revenue Fund and the Tidelands Operating Fund. Both, however, are Tidelands funds, okay? Historically the oil has gone into the Harbor Revenue Fund. It could just as easily gone into the Tidelands Operating Fund, that is oil revenues. The point of the matter is the entity that determines where it goes is not the harbor commission, but the department of oil properties. Specifically, through the city council.

LBBJ: But it's never used that power. The department of oil properties has never directed where that money goes.

Shannon: Has not directed? No.

LBBJ: It has never directed it before?

Shannon: Correct.

LBBJ: Even though, since 1964, it had the authority to do so.

Shannon: Exactly.

LBBJ: So what changed?

Shannon: You're assuming that there is a change.

LBBJ: But what changed? All of a sudden the department wants to control . . .

Shannon: This is not a new issue. This is an issue that has been bounced back and forth for at least as long as I've been city attorney, and probably before that. If you talk to my predecessor, John Calhoun, and if you talk to his predecessor, Robert Parkin, in fact, Robert Parkin might be a very good person to talk to since he was the harbor attorney back in the days when the 1964 Charter change occurred. I've spoken to him, and he's in concurrence with our analysis of the situation. It's always been our position, and always been the city attorney's position to . . .

LBBJ: But I'm not arguing that. What I'm asking is, if the authority has been there . . . we've had some pretty tough years over the last 10 to 12 years . . . So, why hasn't the harbor money been tapped before for the Tidelands?

Shannon: Harbor money is Tidelands money.

LBBJ: But the oil money, the oil revenue has not been tapped before. You just said that, right?

Shannon: You say "tapped," but it's always been in the Tidelands because it's been in the Harbor Revenue Fund. The Harbor Revenue Fund is a Tidelands fund.

LBBJ: But you've never had the department head say, "Okay, we're going to take that money and put it here." Right, that's never happened?

Shannon: I can only speculate that it hasn't needed to happen.

Garner: It did come up recently because we have this new contract with Occidental Petroleum and incremental revenue; we've raised the question, "Can that go to the Tidelands Fund?" And we were told "yes, it could."

LBBJ: But that's always been on record that you can?

Garner: Yes.

LBBJ: Since 1964.

Parkin: We're on record since '64, but this issue really didn't even arise until the mid 1990s at the earliest with the purchase of Union Pacific Railroad Company [property] because '64 cleared the table, cleared the deck, so to speak. It removed all jurisdiction from the harbor department and everything was transferred to the city's operations, and there was no oil revenue going into the harbor revenue fund. In 1994, the harbor department, in the name of the city, purchased the Union Pacific property.

LBBJ: We did a brief story on that in '94 (see story on Page 22). From what I read in the article, it sounds like there was no city council approval necessary. This was harbor commission action. The port paid for it all . . . \$405 million. . . So does the city now plan on reimbursing the harbor department for the \$405 million? How does that work?

Shannon: Well, you'll notice this article really confirms what I said. The Port of Long Beach really purchased it for the land. They purchased it for the incidental to their port activities, and this gets back to really a core point here. It's not the core mission of the harbor department to engage in oil operations. You see nothing about oil in their mission. You see very little about oil in this article. The reason for purchasing this property had nothing to do with oil. They didn't even want the oil. It was not a big deal at the time, I remember very distinctly, the value of this land was predicated on the value of the land itself for port-related purposes, not oil. This article confirms it.

LBBJ: But they still paid \$405 million.

Shannon: They did.

Parkin: But they purchased it in the name of the city. That is the only way they can acquire property. It's not a separate entity . . .

LBBJ: So the port never has to come to the city council for approval?

Parkin: They have authority under the Charter to acquire, in the name of the city, property necessary for harbor operations. So, right, they can do that without coming back to the city council for approval.

Henderson: The majority of the cost they paid for that property is for land and not for the mineral rights.

Garner: Which they still have.

LBBJ: I understand the port made \$30 million plus this year or last year from oil revenue. Is that accurate?

Garner: Last year.

LBBJ: So, that \$30 million plus that the port realized from oil revenue, it cannot now use? Is that accurate or not?

Garner: What do you mean, they cannot use?

LBBJ: In other words, is it going to be under your department's direction, how that money is used?

Garner: Going forward?

LBBJ: Going forward, assuming Measure D passes.

Shannon: You're assuming they can't use it. The point is, who has the authority to determine which fund it goes to? The authority over that determination lies with the department of oil properties. So when you say it's not going to go to the harbor, that portion of the Tidelands Fund, what is called the Harbor Revenue Fund, it's not going to go in there anymore, we don't know that. But we do know that the Tidelands Operating Fund needs money, number one. Number two, that it's a perfectly valid and legal source or receptacle. In all likelihood, for the foreseeable future, oil money will in fact go into the Tidelands Fund.

LBBJ: So, as an example, let's say the port oil profit is \$35 million. You can decide that you want to take a portion of that and put it in the Tidelands Operating Fund, say \$20 million or whatever, and the other \$15 million can be used by the harbor department for whatever projects. You can make that decision, right?

Garner: That would be my recommendation to the city manager.

LBBJ: Okay, and the city manager and city council have to approve that or say "No, we don't like that idea," and then massage it? So your gas and oil department budget is going to grow by whatever that amount of revenue is.

Garner: If that's their decision, yes.

LBBJ: So, your budget is not now or in the past shown that revenue?

Garner: Correct.

LBBJ: Just want to make sure because, again, you've had the authority but you haven't tapped into it so all that oil revenue stayed in the harbor fund and did not show up in your budget.

Garner: Correct.

LBBJ: But now it will, if it passes.

Shannon: It will either way, whether it passes or not.

LBBJ: It will either way, okay. So this will be the first time it will be shown in that department?

Shannon: I don't know that from an accounting standpoint, but, essentially, it will be, yes.

LBBJ: Under no circumstances can this money be used for the General Fund. Is that true?

Shannon: Correct.

LBBJ: Does the city currently charge the Tidelands Fund for services, let's say fire department service?

Garner: Yes, fire and police.

Parkin: Attributable to the Tidelands.

LBBJ: So, let's say there's \$20 million in the Tidelands Fund, and you've got \$2 million worth of public safety needs in the Tidelands area. That fund would be charged \$2 million and that money would go into the General Fund. Is that correct?

Garner: It doesn't go into the General Fund. Their expenses get charged directly to the Tidelands Fund.

LBBJ: So, there's no money from the oil revenue that could possibly go into the General Fund.

Parkin: Port oil revenue purchased with harbor revenue funds, that is correct.

Shannon: I misspoke two questions ago. Just so we're absolutely clear on the record that the transfer amount, what it is now 10 percent, or what it would be if Prop D passes to 5 percent of the gross revenue; That can only go into the Tidelands Fund, as well as on the second issue now, oil revenues. Again, this is all about Tidelands. This is not about the General Fund.

LBBJ: How do you budget for the price of a barrel of oil? Has the port staff in the past decided what that number should be, or have they gone to you and asked your opinion?

Garner: We set the price.

LBBJ: Okay, so they use whatever you set. The city has made money in the last couple years, right?

Garner: Sure.

LBBJ: So you can end up with millions of dollars extra, or millions of dollars less.

Garner: And that's what happened in 2009. We budgeted it at \$85, and the price was lower than that.

LBBJ: So the city lost revenue that it was expecting.

Garner: Yes, we came in under budget.

LBBJ: Have you ever given them a range, like, "here's Plan A, here's Plan B?"

Garner: We certainly have discussions because it is a fluid process. It takes months for the budget to develop, and so we try to calculate where we think prices are headed. I've been very happy with the past couple of years; they've gone with the conservative route. The idea was that they would come up with a conservative price for oil, because as we learned a good lesson in 2009, you can't be too aggressive with that price because it can go up and down. But they come up with a conservative price, and then the conservative price is used to fund structural operations. They are counting on that to be ongoing. Anything above that could be used for one-time expenditures.

LBBJ: Do you feel comfortable with the process of putting Measure D on the ballot? Was it a good one, a fair one?

Shannon: I think it was fair. The second issue, the oil operations issue, has been an issue that's been bounced back and forth at least in my entire term. And I would postulate prior to that time. The first issue, the transfer issue . . . [the auditor] felt the 5 percent gross is a fair, more objective, more predictable source of the transfer. The thing that you always need to keep in mind, however, is that . . . the harbor commission retains the discretion [regarding the annual transfer] to turn over some or none of the money that has been requested based upon their judgement with regard to their operations. There is always that failsafe.

LBBJ: If they have say \$30 million or so less in [oil] revenue, that makes it even tougher to approve a transfer request.

Shannon: That could figure into the mix, but again, I need to emphasize this, they have the discretion. . .

LBBJ: They have the discretion, but they are also appointed by the mayor and the city council. Politically, and I know you don't want to talk about that . . .

Shannon: No, I'll talk about that. Everybody throws that out, but I've been listening to the streaming video of the harbor commission. . . . I heard some very pointed references from the harbor commissioners as to whether they wish to transfer all or a portion of the funds. They look pretty independent to me.

LBBJ: The money from port oil revenue is not counted in the operating revenue, right?

Garner: Going forward, if Prop D passes?

LBBJ: Going forward, Prop D passes, it's part of your budget.

Garner: Correct.

LBBJ: Which would be in the Tidelands, really.

Garner: Yes.

LBBJ: So that \$34 million is not added to the port's . . .

Garner: We're not going to take the money and then take 10 percent. . .

LBBJ: You're not going to do it twice.

Shannon: [Laughing] He asked to do that and I said he couldn't.

LBBJ: So, if the port's revenue is down because of the loss of that \$34 million, or whatever amount, in oil revenue, that cuts into the Tidelands transfer, right? Five percent of \$34 million is \$1.7 million less.

Shannon: Conceivably.

LBBJ: Let's say the port or one of its tenants wants to expand but they have oil wells on the property. Do they have to get your approval?

Garner: They would have to come to us. We're going to have jurisdiction, as we do today, over existing lands that have oil operations . . .

Shannon: There's another side to that coin though, so this is very important. This is something that we clarified, we did do this at the last minute, it's something Susan Wise commented about how we were making changes at the last minute . . . Shortly before we finalized it, it became clear that one thing that wasn't absolutely clear was the fact that this will hold true for existing oil operations. In other words, the absolute authority over the administration of oil revenues and liabilities rests with the department of oil properties. But there was a further question with regard to new oil drilling. Let's say you have something that is currently being used by the harbor, and the department of oil properties wants to now use it for a different purpose, that is for oil purposes, they have to go to the harbor commission and the harbor commission has to approve it. In other words, the harbor commission retains the ability to turn them down, theoretically, based upon their assessment that their needs supercede . . .

LBBJ: Fine, but we're talking about if the harbor commission wants to expand a terminal, they have to . . .

Parkin: That's in existence right now.

Garner: That happens now, so . . .

LBBJ: But it's never occurred.

Garner: It happens every year.

LBBJ: It does? So like middle harbor. They're going to build middle harbor, and

we assume there are some wells in that area . . .

Henderson: There are approximately 20 active wells at middle harbor, that the harbor came and said they wanted those wells out of the way. Well, they're active so there are a couple different ways you go about it. You either pay the working interest owners back for the loss of those wells, or the harbor will redrill the wells. And we usually side on redrilling the wells, the city and everyone else will make more money off that at the end of the day . . .

LBBJ: So, one of the concerns is to that extent, when you have to sign off on a project, does that put control of port property and operations under the control of the city council instead of the harbor commission?

Garner: No.

LBBJ: You recently commented to another media source that its Prop D story had inaccuracies: "Despite what your article states, this contract will not shift a great deal of cash from the port, as this cash would never have materialized without the new OWPA [Optimized Waterfront Program]," which we assume is with Occidental?

Garner: It's with Occidental.

LBBJ: Your quote continues: "This is revenue that the harbor department would not reasonably anticipate receiving in the future, as this revenue is above and beyond what would have otherwise been produced." So we're talking about new wells? "This was not revenue that the harbor department was relying on for new development projects or to protect the port's competitiveness." So now you know this for a fact? You've talked to the commissioners and . . .

Garner: The deal itself is simply, what we do is calculate the status quo as things exist today, here is how much oil we produced. This new deal is, we give a financial incentive for Oxy to drill additional wells on their dime, and that should generate incremental oil revenue. So, in my mind, in all reasonableness, the harbor should not be counting on this oil that would not have been produced otherwise.

LBBJ: Do you feel that you've communicated well with the harbor department? Have you been up front with them on everything?

Garner: We've had numerous, numerous, numerous discussions.

LBBJ: This Occidental deal, this was November of last year? From what I understand, Occidental is now running the port oil field?

Garner: Yes. Occidental owns both of

the sites, Tidelands Operating Company and THUMS. That hasn't always been the case.

LBBJ: They are the operating entity for the oil, and are they now responsible for all costs associated with new drilling, or is that going to happen only if Measure D passes?

Garner: It has nothing to do with D.

LBBJ: So the port is not on the hook for remediation costs?

Garner: Yes, the remediation, there is some discussion on that because, at least in our mind, that is not entirely oil-related. And so, there are some semantics in there we would want to argue . . .

LBBJ: So if the port needs to clean up an area to expand a terminal, the oil revenue won't pay for it like it does now?

Garner: We'd look at the attorney's office, I guess, for clarification on that.

Shannon: I'm not sure that's fact specific, but if it was caused by oil operations I guess there's an argument that oil should pay for it. If it's not caused by oil operations, it's an expansion of the property for development purposes.

LBBJ: So if it has nothing to do with oil . . .

Shannon: The harbor pays for it.

LBBJ: So not only are you taking revenue away that the port would have had in the Harbor Fund that it would have been able to use in different projects, you're also telling them they have to pay additional money for remediation.

Garner: I would assume we would handle it pretty much like we would a private entity coming to us saying, 'We want to buy this property.' Then there would be discussion on who would clean it up.

LBBJ: So you're saying you would probably have to sit down and work out an arrangement between you and the harbor department on whether part of that Tidelands Fund money that you wanted to transfer could be used for remediation. That would be totally legal to do that because the city has control of how the money is spent. It would have to go to the city council probably, too, right? For approval I would think?

Garner: I don't know.

Shannon: To put it in simple, non-financial terms, because I don't claim to be an expert on financial matters, on an ongoing, forward-going basis, they determine where the funds are going to go from a revenue side. But the department of oil properties also assumes the liability for the oil operations, the assets and the liabilities.

LBBJ: So, about the Oxy deal. The

council approved Oxy as the operating entity of the port wells.

Garner: And that was done before this November . . .

LBBJ: Right. This had been in the works for a while, a couple years. So what's Oxy going to do now moving forward?

Garner: Based on that deal in November 2007, they're going to invest at least \$20 million of their own money in exploration in drilling. Then there will be a split of that. Any incremental revenue, once they recover that capital investment between the city and Oxy.

LBBJ: So Oxy takes all the risk.

Garner: Yes.

LBBJ: So the more they make, the more the city is going to make.

Garner: Correct.

LBBJ: But all of that still is Tidelands fund on the port stuff?

Garner: Yes. There's a small amount that's General Fund, but it's primarily Tidelands?

Henderson: It's primarily Tidelands.

LBBJ: When you say 'small,' are we talking millions?

Garner: No.

LBBJ: Tens of thousands?

Garner: Yes.

LBBJ: So that's it on the Oxy deal? That's all there is?

Garner: That's pretty much it. There's a simultaneous discussion with the state for their portion of the oil operations down . . .

LBBJ: So the state wants to get their piece and that hasn't been decided yet?

Garner: Correct. It's been discussed for the last four years and we've been having numerous issues with that.

LBBJ: What's the [former Assemblymember Betty] Karnette bill?

Garner: That was legislation that was passed that would allow state lands to enter into this type of deal with us.

LBBJ: So it didn't exist previously?

Garner: Right. It gave them permission to negotiate and do a deal with us.

LBBJ: For the port?

Garner: No, for the state portion.

LBBJ: So Karnette's legislation in 2008 allowed. . .

Parkin: AB 2165.

LBBJ: Yes, 2165, allowed the state lands commission to negotiate with the city. . .

Garner: And with Occidental.

LBBJ: So the state lands wasn't getting . . . I guess I'm a little confused. What exactly did the bill accomplish?

Garner: Right now we have an existing contract with Oxy to do the drilling and the

state gets their portion. Oxy gets a real small portion of it. This new bill with Karnette allowed discussions to go forward between Occidental, the city and the state on the OWPA contract that would be for the incremental share, which we haven't been able to accomplish yet.

LBBJ: So state lands wants a certain percentage and all the parties haven't agreed on it or something like that?

Garner: Right.

LBBJ: And what happens if you don't agree? It's not like a union where there's an impasse, right?

Garner: That won't happen. That's where we are right now.

LBBJ: It won't happen? Then what? The state is just out of it?

Parkin: They will continue to get their regular share.

Garner: Oxy won't commit the capital to explore. So in short, the status quo.

LBBJ: So you don't feel this is a major problem? It doesn't affect Measure D at all?

Garner: No. This would be a great deal for the city. So that's why we're really pushing it.

LBBJ: So, Prop D and Occidental are separate issues?

Garner: Yes. Prop D doesn't have anything to do with Oxy . . . It really is clarifying the existing language in our mind.

LBBJ: Switching back to use of the Tidelands Fund, if the city council wanted to expand the convention center, that's ok because it's within the Tidelands, right?

Shannon: That's correct.

LBBJ: Can the Tidelands Fund lend money to a developer, like the redevelopment agency lends money?

Parkin: I'm not sure if harbor lends money to their tenants or not. The city doesn't, as far as I know, have any money that we lend in the Tidelands Operating Fund.

LBBJ: So if someone came to the city council and said, 'Look, I've got a great idea to build this beautiful project around this part of Queensway Bay, but I need you to give me \$10 million in seed money to get it going' . . .

Parkin: I think you'd have to look at the project and what it is and if it has a Tidelands purpose and if it's going to benefit the Tidelands. I think the city could possibly participate, but that's a hypothetical . . .

LBBJ: So it's not inconceivable that Tidelands money could be used for a tide-lands-related project..

Parkin: Those funds were used to purchase the Queen Mary.

LBBJ: Many industry people think that the first part of Measure D is a cover for the oil revenue.

Shannon: It's not. It's not true.

LBBJ: Well, it looks that way.

Shannon: Well, let me just put it as boldly as I can.

LBBJ: Please do.

Shannon: If Prop D does not pass, all of the significant changes with regard to the second issue will take place.

LBBJ: Then why are we changing the language?

Shannon: Because we're clarifying it!

LBBJ: Well it's a legitimate question. Why haven't you clarified it before?

Shannon: Well I'll just keep using the word 'clarify' and you use the word 'change.'

LBBJ: We read the analysis we got from Mr. Parkin.

Shannon: Look at more of the analysis. The problem with the section on the harbor is that it really is too long. It could be shortened. If you focus on the two sections that I've provided you with, first of all that's a portion of Article 12 that clearly says the harbor does not have responsibility for the administration of the oil operations. And then, Article 13, which was enacted in 1964, that says the department of oil properties has jurisdiction over all oil operations including those in the harbor, the conclusion is there.

LBBJ: So then why would there be any criticism of Measure D?

Shannon: Well, you can argue with the first issue if you like, and you can disagree with our legal analysis if you like.

The reality of it is that the primary part of this measure is the change in the transfer because it does mean dollars. Whether the change is terribly significant, we'll have to find out in the future. The important thing is, and the first issue is, that the harbor commission does retain the discretion and the responsibility to refuse to turn it over. Only after that first issue was it decided to put the second issue on the ballot. If it were only the second issue, there would be no ballot measure. ■

Election Laws & Proposition D

Within a week of city council action placing Measure D on the November 2 ballot, Dominic Holzhaus, principal deputy city attorney, prepared for the Long Beach Board of Harbor Commissioners an explanation about the “legal limitations on the participation of City employees and officials” in a campaign. He informed commissioners that they could “legally adopt a resolution or minute order in support of, or in opposition to, a ballot measure. The action must be confined to that one step – no workshops or study sessions supporting or opposing the measure would be permissible.”

He further explained: “Officials and City staff may not undertake any efforts to support or oppose a ballot measure during regular office hours. After hours, however, elected officials and/or City staff may attend community meetings, conduct campaigns, etc., in support of or opposition to a ballot measure. Of course, no City funds (such as office supplies or use of City facilities) can be used for these activities.”

When, exactly, is a councilmember “not on the clock?” Before 8:00 a.m.? After 5 p.m.? What about at city council meetings, which sometimes run until midnight? Councilmembers go to district and citywide functions several times a week, on weekends and at various times of the day and night. They are usually introduced using their elected title. Are these considered regular office hours?

Another interesting point is the spending of taxpayer money on “educational material regarding a ballot measure, as opposed to promotional material.” The city got its hand slapped 10 years ago during the debate on cutting the utility users tax in half. It used a city newsletter mailed in utility bills to encourage a “no” vote. According to Holzhaus’ memo, the courts “are very strict on what is to be considered informational material, and both sides of the argument must be presented with equal emphasis.” We encourage voters to keep an eye out for any city “material” discussing Measure D to ensure that information for and against is properly presented.

Port Of Long Beach Finalizes Purchase of UP’s 725 Acres

(Editor’s note: The following article about the port’s purchase of Union Pacific land appeared in the March 1-14, 1994, edition of the Business Journal. The commission – Alex Bellehumeur, David Hauser, Joel Friedland and Roy Hearrean – voted 4-0. Commissioner Carmen Perez was absent.)

With an eye toward accommodating an expected doubling of cargo movement in the next 30 years, Port of Long Beach Harbor Commissioners announced last week that they have agreed to a land purchase agreement that will increase the size of the port area by 35%.

In the largest single land acquisition in the port’s 83-year history, commissioners have authorized a \$405 million payment to Union Pacific Resources (UP) for 725 acres of land in the north harbor area. The land, which has been used by UP for oil production, includes acreage on both the north and south of the Cerritos Channel. The port also receives UP’s oil reserves on that land.

“With cargo movements through Southern California expected to double within the next 30 years, we now will be able to meet our customer’s needs well into the next century,” said Harbor Commission President Alex R. Bellehumeur in announcing the culmination of nine months of negotiations with UP officials.

The land purchase includes 289 acres

north of Cerritos Channel, 354 acres south of Cerritos Channel and 82 acres within the channel.

According to Port Executive Director S. R. Dillenbeck, the land will be developed for shipping terminals “for new customers who have expressed interest in moving to Long Beach and for existing port tenants who need larger facilities.” He added that the new facilities are expected to generate about 1,000 direct jobs within the harbor and more than 100,000 trade-related indirect jobs.

The terms of the agreement call for the port to pay UP \$280 million upon the close of escrow, scheduled for the middle of this month. Approximately \$150 million of that will be taken from port reserves, with another \$130 million being generated through the issuance of commercial paper. The remaining \$125 million will be paid in two installments in December of 1994 and 1995.

The port will also soon be tapping its reserves for another \$120 million to be paid to Southern Pacific as its share of the agreement to purchase the railroad’s right-of-way for the planned Alameda Corridor.

With port reserves currently at \$290 million, the transactions with Union Pacific Resources and Southern Pacific will leave the port with \$20 million in reserves.

City Auditor Doud Clarifies Timeline

Two of the big question marks since the August 3 action by the Long Beach City Council to place Measure D on the November ballot is who’s idea was it to change the port transfer formula and why? During a recent Q&A session with City Attorney Bob Shannon and others, Shannon said it was City Auditor Laura Doud’s suggestion.

Doud told the Business Journal that in October 2009, the city council had a lengthy discussion about the Tidelands Operating Fund and the future stability of the fund. From that meeting came a request that Doud’s staff look at the harbor revenues and expenses and prepare a report – not an audit, but a report, on the annual transfer (10 percent of net revenue) from the harbor to the Tidelands Operating Fund.

That report, the “Harbor Department Transfer Analysis Report” discussed in the September 14 issue of the Business Journal, took about nine months to complete. One of the auditor’s key recommendations was that harbor commissioners inform port staff to stop deducting the previous year’s transfer amount from the “base upon which the current year’s transfer is calculated.” She also noted that items such as depreciation and amortization expense, non-operating income and expense and capital grants are included before arriving at the net income. “This all-inclusive approach raises many questions and creates ambiguity surrounding the appropriateness of the transfer base,” she said.

In other words, the auditor felt the port wasn’t using a true net number, thus reducing the annual transfer amount to the city’s Tidelands Operating Fund (TOF).

Doud said she made several requests to

to the commission (during June of this year) to implement the accounting changes. The commissioners declined to do so. Since the commissioners would not budge, Doud said she was encouraged by one councilmember to come up with another idea. That idea was changing the formula for the annual transfer to gross operating revenues. She recommended the city council go with either three, four or five percent of gross operating revenue; councilmembers opted for the higher amount.

The city auditor presented her recommendation to the mayor and city council in a June 26, 2010, letter, which read in part:

“A more straightforward approach would be to use gross revenues to calculate the transfer . . . Specifically, gross revenues would be defined as the Harbor’s Gross Operating Revenues as shown on the independently audited financial statements. While Gross Operating Revenues is influenced by various economic factors, it does represent a more transparent view of the Harbor’s performance and allows for the transfer to be calculated under objective and unambiguous terms. By employing Gross Operating Revenues in the calculation, discretionary costs that can vary widely from year-to-year are eliminated from the transaction. This would provide City staff with a more reliable base to forecast and project future transfers, thus resulting in a more effective budgeting process for the TOF.”

Doud made it clear that she tried to avoid having to go to a Charter change. She said if commissioners had accepted her original recommendation, a ballot measure by the city council would not have been necessary. She also stressed that her recommendation did not involve port oil revenue.