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Port Allowed To Keep Oil Lease Revenue For Fiscal Year 2011

City Yet To Determine Fate Of Harbor Oil Funds For Future Years

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Despite the Long Beach Gas & Oil Department now moving all oil revenue from the Port of Long Beach to the city's Tidelands Oil Revenue Fund (TORF) since the passage of Measure D, the port may be able to keep its lease revenue, derived from oil properties, at least for this fiscal year.

Chris Garner, director of the Gas & Oil Department, told the Business Journal that the Long Beach Harbor Department is most likely to retain anywhere from $4.2 million to $5 million in oil lease revenue this year from THUMS Long Beach Company and Tidelands Oil Production Company, which operate oil wells on property in the harbor district.

All oil revenues, including from oil production, are currently being retained in the TORF. However, Garner said oil lease revenues for Fiscal Year 2011 most likely would be transferred back to the harbor department since the port has already finalized its budget. "The plan right now is to keep the harbor department budget whole," he said. "That money would eventually go back to the harbor department. Obviously, that's a call of the city council, but that's my expectation and that would be our recommendation." However, the city has yet to determine where all oil revenue for future years would be allocated to, he said.

The transfer of oil funds was made in ongoing discussions between port staff and the gas and oil department as the city transitions to take over all oil operations, including those previously controlled by the harbor department. The goal, Garner said, is to keep any associated revenue from those operations first in the city's TORF, which then transfers funds to the Tidelands Operating Fund (TOF) to pay for maintenance and expenses in the tidelands area, under the primary direction of the city council. "Now, basically, what we're going to be doing is putting all the money into one pot and then saying OK, city council, tell us how to disperse that," Garner said. "If they want to give money to the harbor department, that's their prerogative, but there's nothing that requires them to do so."

During a February 14 Long Beach Harbor Commission meeting, where port financial staff outlined future funding concerns, some commissioners expressed a need for clarification and further discussion regarding the transfer of oil money from the port to the city. "We need to come back and visit that, because we need discussion of the tidelands oil revenue fund, as opposed to the tidelands operating fund," said Commissioner Mike Walter. "These are two distinct funds, as you know, and they're set up by the City Charter. We really have to follow those and it would appear at times there's pressure not to follow them . . . There's a lot of difference between legal obligations and a wish list."

A memo, addressed to port staff, dated February 2, 2011, along with another letter sent December 15, 2010, further states that the gas and oil department is assuming the administrative responsibility for all oil land lease contracts and pipeline contracts previously handled between the harbor department and oil contractors, including Oxy Long Beach Inc. Permits for new wells, re-drilling of existing wells or other field operations within the port now go through the Long Beach Department of Development Services. In addition, the city's gas and oil department staff is continuing to work with port staff in various capital improvements, including the Gerald Desmond Bridge Replacement and Middle Harbor projects, which involve abandoning or replacing oil wells.

The move comes after voters approved the controversial Measure D, which city staff has contended merely clarifies City Charter language in regards to oil operations, while changing the formula of the port's annual fund transfer to the city from 10 percent of net income to 5 percent of gross operating revenue. The harbor commission retains the right to approve or deny the transfer of funds to the city if the port can provide a financial reason for doing so. But, City Attorney Robert Shannon said the transfer of oil funds from the harbor department is a different story, stating that the move would have occurred under previous City Charter language, regardless of Measure D passing.

"The charter makes it very clear that the obligation of the administration of all oil operations, whether it be in the harbor, in the tidelands generally or in the general city, is the responsibility of the department of oil properties and to the city manager, and ultimately to the city council," he said. "I can only speculate that years ago that it was felt that the harbor commission is not in the oil business. They're in the business of operating a port and to the extent that any oil revenue is realized anywhere in the city that should be the responsibility, as so far as the citizens were concerned, that should be the responsibility of the department of oil properties."

Port staff has estimated that the passage of Measure D means the city would transfer roughly $100 million in all oil revenue from the port to the city over the next five years. But Garner said annual oil revenues, including those in the harbor district, "fluctuate a tremendous amount," depending on how much oil is produced, how much expenses are and the price of oil. He couldn't immediately provide a figure for most recent oil revenues from the port. The port's oil lease contract revenue, however, is a fixed income and is easier to track, he said.

Tidelands Fund Audit

Meanwhile, as first reported in the February 15 Business Journal, the Pacific Merchant Shipping Association (PMSA), a trade group representing shipping lines and terminal operators, has recently requested the California State Lands Commission look into performing an audit of the city's Tidelands Funds, in addition to investigating the transfer of oil revenues, as it pertains to the city's public trust doctrine. The PMSA, a vocal opponent of Measure D, has charged the city of using the port as an "ATM machine" and has called for full disclosure of where port funds are being spent.

Shannon, however, said the city welcomes an audit by the state, and added that allegations have yet to be brought forward if the city has gone against it's fiduciary responsibility of spending all tidelands funds within the tidelands area and in trust of the state.

"The state has every right to do an audit," he said. "The audit would be directed toward whether or not the city has diverted any tidelands funds outside of the tidelands and . . . Nobody has even alleged that this has happened. But, if somebody can come up with some evidence, we welcome the audit." ■