

35. (LOCATION OF BOUNDARY LINE BETWEEN ALPINE COUNTY AND AMADOR, CALAVERAS AND TUOLUMNE COUNTIES - W.O. 710.) The Commission's staff reported as follows:

"At its meeting held July 28, 1954, the following actions were taken by the State Lands Commission with respect to the matter of the common boundary between Alpine County and Amador, Calaveras and Tuolumne Counties:

1. Made the report titled 'Report to the State Lands Commission on Boundary between Alpine County and Amador, Calaveras and Tuolumne Counties' dated February 24, 1954, a part of the Minutes of that meeting, by reference;
2. Accepted a document entitled 'Objections to Final Report of Executive Officer Presented by Alpine County', submitted by Wade H. Coffill, Special Attorney for Alpine County;
3. Adopted a resolution to take under advisement the question of the boundary between Alpine County and Amador, Calaveras and Tuolumne Counties, pending the furnishing to other counties at interest of a copy of the aforementioned brief by Mr. Coffill, and allowed the latter counties 15 days to file answers thereto, and Alpine County a further 30 days for rebuttal to the answers so filed.

"In accordance with the Commission's action, briefs were furnished by Alpine County to the other counties at interest, and said counties submitted replies thereto. Thereafter, on October 31, 1954, Alpine County submitted its final brief in the matter. All of this additional material was submitted to the Office of the Attorney General and an informal opinion was sought as to the effect of these additional submissions on the Executive Officer's report to the Commission of February 24, 1954; and as to whether or not the Commission should adopt the findings contained in said report.

"As of December 3, 1954, the Attorney General's Office advised that after review of these additional submissions

'...there was no reason to depart from the conclusions of this office of February 15, 1954 and of March 15, 1954.'

"These latter were expressions to the effect that the Executive Officer's report of February 24, 1954 complied with statutes, and was in order.

"The Attorney General further advised that in view of the fact that Alpine County has never withdrawn or moved to dismiss or otherwise terminate its original request to determine the boundary

'...the Commission is authorized to proceed, in the words of the statutes, to 'survey and mark' and there is apparently no judicial proceeding against the Commission which would prevent that.'

"With respect to the afore-mentioned remarks of the Attorney General regarding 'judicial proceeding', the Commission's attention is again called to the fact that Alpine County filed a complaint in the matter of the boundary determination in the Superior Court of that County in December of 1953, naming Amador, Calaveras and Tuolumne Counties as defendants. This action is still pending in the Superior Court of Stanislaus County, to which Court there was a transfer of venue, by stipulation between the parties.

"The foregoing may be summarized as follows:

1. The directive contained in the Commission's resolution at its meeting of July 28, 1954, relating to the filing of briefs, has been carried out.
2. Alpine County's brief entitled 'Objections to the Final Report of the Executive Officer presented by Alpine County', the answers thereto by other interested counties, and Alpine's reply thereto, have been received and reviewed by this office and that of the Attorney General.
3. The Attorney General's Office has found no basis in these additional submissions for departing from its former conclusion that the Executive Officer's report of February 24, 1954 was proper and in order.
4. The court action begun by Alpine County, in which the State is not named, seeking a decision on the boundary matter, is still pending.
5. The Office of the Attorney General has advised that it is in order for the Commission to proceed in this matter in accordance with the statutes."

Mr. Wade H. Coffill appeared on behalf of Alpine County, and requested that the Commission defer taking any further action until the Court has decided whether the Commission has any jurisdiction.

Mr. Ross Carkeet, representing Tuolumne County, appeared and stated that inasmuch as Alpine County originally instituted the proceedings for settlement of the boundary question by seeking administrative action through the State Lands Commission, it must await such action before proceeding in the courts. He suggested that the Commission pass upon the recommendations of the Executive Officer, after which Alpine County, if not satisfied, could go to the courts for relief.

Mr. Joseph S. Huberty of Calaveras County concurred with Mr. Carkeet, indicating that inasmuch as the staff of the State Lands Commission has been proceeding at the request of Alpine County, he could see no reason to defer making a finding at this time.

Mr. Gard Chisholm appeared for Amador County, and informed the Commission that as a result of the delay in reaching a decision, land has been eliminated from Amador County's tax rolls and taxed by Alpine County, and that requests have been received from taxpayers that their lands be included on the Amador County tax rolls. He emphasized that a decision should be made in justice to the taxpayers. He indicated that possibly he was originally responsible for the court action in Stanislaus County started by Alpine County, as it was his opinion that the Commission did not have authority to proceed. However, he went on to state that when an administrative agency has once accepted jurisdiction, it should complete its case and make a decision. He further stated that there is no dispute on the part of Amador County; it merely wants to know where the boundary line is located.

Upon a query to Mr. Coffill by the Chairman as to whether failure by the Commission to adopt the recommendations of the staff could result in anything other than delay in the ultimate decision, Mr. Coffill agreed that he would like to see the matter decided one way or another.

Mr. Peirce indicated that he felt it would be helpful to the court if some definite action was taken.

UPON MOTION DULY MADE AND UNANIMOUSLY CARRIED, IT WAS RESOLVED AS FOLLOWS:

WITH RESPECT TO THE BOUNDARY BETWEEN ALPINE COUNTY AND AMADOR, CALAVERAS AND TUOLUMNE COUNTIES, THE STATE LANDS COMMISSION FINDS AS FOLLOWS:

1. THE BOUNDARY COMMON TO AMADOR AND ALPINE COUNTIES BEGINS ON THE NORTH AT "A POINT ON THE AMADOR AND NEVADA TURNPIKE ROAD" (PRESENTLY STATE HIGHWAY 88) "IN FRONT OF Z. KIRKWOOD'S HOUSE", IN SECTION 22, TOWNSHIP 10 NORTH, RANGE 17 EAST, MOUNT DIABLO BASE AND MERIDIAN;
2. THENCE SAID COMMON BOUNDARY PROCEEDS DUE SOUTH IN A STRAIGHT LINE ON A TRUE MERIDIAN BECOMING THE BOUNDARY COMMON TO ALPINE AND CALAVERAS COUNTIES AS IT CROSSES THE NORTH FORK OF THE MOKELUMNE RIVER;
3. THENCE THE BOUNDARY COMMON TO CALAVERAS AND ALPINE COUNTIES CONTINUES ON A STRAIGHT LINE DUE SOUTH ON A TRUE MERIDIAN TO THE "EMIGRANT ROAD", AS DESIGNATED ON THE UNITED STATES LAND OFFICE PLAT OF TOWNSHIP 7 NORTH, RANGE 17 EAST, MOUNT DIABLO MERIDIAN, AS SURVEYED IN 1874 AND 1878;
4. THENCE IT CONTINUES EASTERLY ALONG SAID "EMIGRANT ROAD" TO ITS INTERSECTION WITH THE "BIG TREE AND CARSON VALLEY ROAD", AS DESIGNATED ON SAID PLAT, SAID INTERSECTION BEING LOCATED IN THE SE $\frac{1}{4}$ OF SECTION 13 ON SAID PLAT;

5. THENCE IT PROCEEDS SOUTHEASTERLY IN A DIRECT LINE TO THE JUNCTION OF THE CLARK FORK WITH THE MIDDLE FORK OF THE STANISLAUS RIVER; THIS LINE BECOMES THE BOUNDARY COMMON TO ALPINE AND TUOLUMNE COUNTIES AS IT CROSSES THE NORTH FORK OF THE STANISLAUS RIVER;
6. THENCE UP AND ALONG CLARK FORK TO THE MOST SOUTHEASTERLY POINT ON ITS HEADWATERS;
7. THENCE IN A DIRECT LINE TO THE SUMMIT OF SONORA PASS IN SECTION 35, TOWNSHIP 6 NORTH, RANGE 21 EAST, M.D.B. & M. (AS PROTRACTED).

FURTHER, THE EXECUTIVE OFFICER IS DIRECTED TO ADVISE THE COUNTIES AT INTEREST OF THIS FINDING. BEFORE UNDERTAKING TO "SURVEY AND MARK" SAID BOUNDARY, HE SHALL REPORT TO THE COMMISSION AS TO THE DECISION RENDERED IN THE NOW PENDING CASE, COUNTY OF ALPINE VS. COUNTY OF TUOLUMNE, COUNTY OF CALAVERAS AND COUNTY OF AMADOR, SUPERIOR COURT, COUNTY OF STANISLAUS, NO. 52559, AND AWAIT THE INSTRUCTIONS OF THE COMMISSION.