

MINUTE ITEM

34. REMOVAL OF ABANDONED DERRICK BARGE ON TIDE AND SUBMERGED LANDS OFFSHORE HUNTINGTON BEACH STATE PARK, HUNTINGTON BEACH, ORANGE COUNTY - W.O. 3648.

Following presentation of Calendar Item 32 attached, Commissioner Carr suggested that the situation should be investigated further to see whether the owner of the barge has any responsibility. He was assured by the Executive Officer that a thorough check will be made on this point through the office of the Attorney General, although from investigations made to date it is not apparent that there is any provision in law for holding the owner responsible once a vessel has been abandoned. In the interim immediate action is imperative because of the danger to the general public using the area.

THE EXECUTIVE OFFICER IS AUTHORIZED TO ENTER INTO AND EXECUTE A CONTRACT PROVIDING FOR REMOVAL OF THE BARGE KNOWN AS THE "DONOBUH POWER DERRICK BARGE" NOW LYING ABANDONED ON TIDE AND SUBMERGED LANDS FRONTING HUNTINGTON BEACH STATE PARK. SAID CONTRACT SHALL PROVIDE FOR THE PAYMENT OF SERVICES RENDERED AS FOLLOWS: THE VALUE OF ALL SALVAGE RECOVERED IN CONNECTION WITH THE REMOVAL OF THE BARGE PLUS AN AMOUNT NOT TO EXCEED \$7,000. THE EXECUTIVE OFFICER IS ALSO AUTHORIZED TO SUBMIT A REQUEST FOR A DEFICIENCY AUTHORIZATION AGAINST THE STATE LANDS ACT FUND TO THE DEPARTMENT OF FINANCE TO DEFRAY THE COST OF THIS WORK SINCE THE STATE LANDS DIVISION BUDGET, 1960-61 FISCAL YEAR, MAKES NO PROVISION FOR SUCH EMERGENCY COSTS.

Attachment

Calendar Item 32 (3 pages)

CALENDAR ITEM

SUPPLEMENTAL

32.

REMOVAL OF ABANDONED DERRICK BARGE ON TIDE AND SUBMERGED LANDS OFFSHORE HUNTINGTON BEACH STATE PARK, HUNTINGTON BEACH, ORANGE COUNTY - W.O. 3648.

The State Lands Commission is faced with the necessity of taking immediate action looking towards the removal of a derrick barge beached on tide and submerged lands offshore Huntington Beach State Park, Huntington Beach, California.

The facts respecting this necessity are as follows:

1. On June 24, 1960, during the course of performing a salvage operation, a salvage barge known as the "Donohugh Power Derrick Barge" and belonging to Captain W. N. "Bill" Donohugh of San Pedro, California, broke its anchorage and washed ashore on the tidelands fronting Huntington Beach State Park. In so doing, the vessel "broke its back". Thereafter, as of June 29, 1960, he directed a letter to the Corps of Engineers, U. S. Army, Los Angeles, in which he detailed the manner in which the barge was lost. The letter pointed out that (a) the barge was properly and securely anchored prior to its breaking loose; (b) that high winds and unusual wave action in the area at the time caused the barge to break from its mooring; (c) that thereafter he endeavored to remove it seaward and upon finding its back broken concluded removal attempts would present a new menace to navigation; (d) that after consultation with the Coast Guard "it was deemed advisable to leave the barge at its location and refer its disposition to the U. S. Army Engineers". His letter also stated that his estimate of the value of the vessel at the time of its loss was \$40,000.
2. The Corps of Engineers, U. S. Army, has disavowed responsibility for removal of the barge since it is not in a navigable channel.
3. Investigation into the matter of responsibility for the removal from a legal aspect reveals the following:
 - (a) Although the barge is beached in front of the Huntington Beach State Park, it lies on tide and submerged lands, i.e., offshore of the area owned and controlled by Beaches and Parks Division and thus out of the latter's jurisdiction.
 - (b) As a result of Staff Counsel's investigation, the conclusion was reached that when the vessel went aground it was the result of "an act of God" and not as the result of a negligent act of the owner. Therefore, under Federal law, liability of the owner is limited to the value of the vessel, and the owner is under no legal obligation to remove it after he has abandoned it.
 - (c) The tide and submerged lands on which the vessel is beached are under the general control and administration of the State Lands Commission by reason of the provision of Section 5301, Public

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Resources Code. Additionally, the matter falls under Commission's jurisdiction as a result of the enactment of Chapter 1201, Statutes of 1959 (Section 6309, Public Resources Code) relating to salvage operations over and upon the ungranted tide and submerged lands of the State.

- (d) While some responsibility for the removal might be attributed to the City of Huntington Beach under the provisions of Section 522, Harbors and Navigation Code, since the vessel apparently lies within an area annexed by the City, the Section of the Code cited is permissive with respect to removal and not mandatory. Hence, the City cannot be forced to take action if it does not so desire. The Attorney General's office advises informally that action to force the City to remove the barge might result in a dispute and does not appear advisable due to the urgency of removal.
4. At its present location just offshore the State park, the barge is a menace to the public health and safety. In a letter dated July 13, 1960, A. D. Philbrook, District Superintendent, Division of Beaches and Parks, requested its removal for the reason that "The lifeguards and other personnel are unsuccessfully attempting to warn visitors away from this attractive hazard. They are also assisting and bandaging visitors, who get into trouble here. To protect the thousands of visitors, who enjoy Huntington Beach State Park, each day, it is imperative, this barge be removed completely, as soon as possible."

Other complaints have been received from the body public. A telephone report on July 27, 1960, from the State Park indicates that within the last three or four days two persons were seriously lacerated (stitches had to be taken) as a result of having been washed into the barge by rip tides. As the foregoing indicates, the matter of removal is urgent to prevent further serious injuries to persons and in the interests of public safety,

5. The Division's staff has requested bids from several salvage operators to remove this barge. Estimates made by prospective bidders indicate that the remaining value of any salvage will be scrap or junk not to exceed \$500. Rough estimates from the same sources also indicate that the cost of removal should not exceed \$7,000. Bids released provide for compensation to the successful bidder on the basis of "the value of all salvage recovered in connection with the removal of the barge plus \$ _____ (bidder's cost for services over and above salvage value)".

In view of the foregoing and the urgency of this matter,

IT IS RECOMMENDED THAT THE EXECUTIVE OFFICER BE AUTHORIZED TO ENTER INTO AND EXECUTE A CONTRACT PROVIDING FOR REMOVAL OF THE BARGE KNOWN AS THE "DONOHUGH POWER DERRICK BARGE" NOW LYING ABANDONED ON TIDE AND SUBMERGED LANDS FRONTING HUNTINGTON BEACH STATE PARK. SAID CONTRACT SHALL PROVIDE FOR THE PAYMENT OF SERVICES RENDERED AS FOLLOWS: THE VALUE OF ALL SALVAGE RECOVERED IN

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CONNECTION WITH THE REMOVAL OF THE BARGE PLUS AN AMOUNT NOT TO EXCEED \$7,000. IT IS FURTHER RECOMMENDED THAT THE EXECUTIVE OFFICER BE AUTHORIZED TO SUBMIT A REQUEST FOR A DEFICIENCY AUTHORIZATION AGAINST THE STATE LANDS ACT FUND TO THE DEPARTMENT OF FINANCE TO DEFRAY THE COST OF THIS WORK SINCE THE STATE LANDS DIVISION BUDGET, 1960-61 FISCAL YEAR, MAKES NO PROVISION FOR SUCH EMERGENCY COSTS.