

MINUTE ITEM

35. TIMBER TRESPASS, LAKE COUNTY, UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST SERVICE - S.W.O. 7951.

After consideration of Calendar Item 11 attached, and upon motion duly made and unanimously carried, the following resolution was adopted:

THE COMMISSION APPROVES A SETTLEMENT WITH THE UNITED STATES FOREST SERVICE OF THE TIMBER TRESPASS OCCURRING ON STATE LAND UNDER THE JURISDICTION OF THE COMMISSION AT THE NEGOTIATED FIGURE OF \$1,543.31, THE AMOUNT OF ACTUAL DAMAGE INCURRED, AND THE EXECUTIVE OFFICER IS AUTHORIZED, UPON PAYMENT TO THE COMMISSION OF THE SUM OF \$1,543.31, TO EXECUTE SUCH AGREEMENT AS MAY BE REQUIRED BY THE UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST SERVICE, TO RELIEVE THE DEPARTMENT OF FURTHER LIABILITY SUBJECT TO APPROVAL OF ANY SUCH AGREEMENT BY THE OFFICE OF THE ATTORNEY GENERAL.

Attachment

Calendar Item 11 (3 pages)

CALENDAR ITEM

11.

TIMBER TRESPASS, LAKE COUNTY, UNITED STATES DEPARTMENT OF AGRICULTURE,
FOREST SERVICE - S.W.O. 7951.

In early 1963 a timber-cutting trespass was observed on a parcel of State School Lands under the jurisdiction of the State Lands Commission described as the NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 16, T. 19 N., R. 9 W., M.D.M. Title to this parcel passed to the State from the United States on August 25, 1880, pursuant to the terms of the School Land Grant, Act of Congress, approved March 3, 1853 (10 Stat. 244), as amended. The land is situated in a remote mountainous timber area within the exterior boundaries of Mendocino National Forest, about 45 miles north of Upper Lake and approximately 50 miles northeast of Ukiah.

A detailed staff investigation discloses that the parcel was logged as part of a United States Forest Service timber sale in 1960, the cutting area of which included about 4000 acres. The Forest Service has acknowledged the removal and sale of certain timber from the State parcel, stating that such sale inadvertently occurred due to faulty status records which led Forest Service representatives to believe that the parcel was owned by the United States as a part of the National forest.

The trespass involved the removal and sale of various species of timber as follows:

<u>Species</u>	<u>Volume M.B.F.</u>	<u>Value per M.B.F.</u>	<u>Total Value</u>
Ponderosa Pine	95.880	\$ 12.91	\$ 1,237.81
Sugar Pine	15.803	15.93	251.74
Douglas-fir	35.530	1.50	53.29
White Fir	0.470	1.00	.47
TOTAL	147.683		\$ 1,543.31

Total Value of Damages Incurred: \$1,543.31

The above volumes and values and the total damages incurred have been confirmed by staff appraisal, and mutual agreement thereon has been reached through negotiations between the Division's staff and Forest Service representatives.

The staff report indicates that overmature, higher-risk trees and the larger-diameter classes were cut, leaving a merchantable stand of about 10 M.B.F. per acre on the 15-acre cut-over parcel. The residual stand insures abundant reproduction of Ponderosa and Sugar Pine, and of Douglas-fir and White Fir on the logging area. No detriment to the residual stand or other potential use of the parcel is considered to have resulted from the trespass cutting.

While the nature of the timber trespass would ordinarily fall under the double indemnity feature of Section 3346 of the California Civil Code, the

CALENDAR ITEM 11. (CONTD.)

Office of the Attorney General, in a similar situation, has advised (see Exhibit "A") that the State is not in a position to assess the Federal Government for double indemnity. Accordingly, it is in order to settle the trespass for the amount of actual damage incurred.

IT IS RECOMMENDED THAT THE COMMISSION APPROVE A SETTLEMENT WITH THE UNITED STATES BUREAU OF LAND MANAGEMENT OF THE TIMBER TRESPASS OCCURRING ON STATE LAND UNDER THE JURISDICTION OF THE COMMISSION AT THE NEGOTIATED FIGURE OF \$1,543.31, THE AMOUNT OF ACTUAL DAMAGE INCURRED, AND AUTHORIZE THE EXECUTIVE OFFICER, UPON PAYMENT TO THE COMMISSION OF THE SUM OF \$1,543.31, TO EXECUTE SUCH AGREEMENT AS MAY BE REQUIRED BY THE UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST SERVICE, TO RELIEVE THE DEPARTMENT OF FURTHER LIABILITY SUBJECT TO APPROVAL OF ANY SUCH AGREEMENT BY THE OFFICE OF THE ATTORNEY GENERAL.

EXHIBIT "A"

State of California

Department of Justice

~~MEMORANDUM~~

To: State Lands Division
1320 K Street
Sacramento

Date: Sept. 17, 1964

File No.:

Attention: Kenneth C. Smith

From: Office of the Attorney General

Subject: S.W. $\frac{1}{4}$ of N.W. $\frac{1}{4}$, Sec. 24, T. 38 N.
R. 6 E., M.D.M., 40 Acres Lassen County
S.W.O. 8034

You have inquired whether, assuming that the United States has committed a timber trespass, the United States is liable for double or treble damages under section 3346, California Civil Code. Double or treble damages, under section 3346, are penal and punitive in nature (Swall v. Anderson, 60 Cal.App.2d 825). The Federal Tort Claims Act (28 U.S.C.A. 1346, and related sections) permits certain types of suits to be brought against the United States, but in 28 U.S.C.A. 2674, provides that the United States shall not be liable for punitive damages. Therefore, the limit of liability of the United States under section 3346 of the California Civil Code is compensatory damages, i.e., the amount that will compensate for the actual detriment caused by the trespass.

/s/ PAUL M. JOSEPH

PAUL M. JOSEPH
Deputy Attorney General

PMJ:ld