

57. AUTHORIZATION FOR EXECUTION OF AGREEMENT TO CORRECT TECHNICAL MATTERS RELATING TO A PRIOR EXCHANGE OF LANDS, MADE FOR PURPOSES OF A FLOOD-CONTROL CHANNEL AND BOUNDARY SETTLEMENT, IN THE VICINITY OF ALAMEDA CREEK, ALAMEDA COUNTY, CALIFORNIA - W.O. 503.431.

After consideration of Calendar Item 26 attached, and upon motion duly made and unanimously carried, the following resolution was adopted:

THE COMMISSION AUTHORIZES THE EXECUTION OF THE AGREEMENT TO CORRECT TECHNICAL MATTERS RELATING TO A PREVIOUS EXCHANGE OF LANDS WITH LESLIE SALT CO., FOR PURPOSES OF A FLOOD-CONTROL CHANNEL AND BOUNDARY SETTLEMENT, IN THE VICINITY OF ALAMEDA CREEK, ALAMEDA COUNTY, CALIFORNIA, AS FULLY SET FORTH IN EXHIBIT "AA" ATTACHED, AND TO EXECUTE ALL OTHER INSTRUMENTS NECESSARY TO PERFORM FULLY THE PROVISIONS THEREOF.

Attachment

Calendar Item 26 (7 pages)

AUTHORIZATION FOR EXECUTION OF AGREEMENT TO CORRECT TECHNICAL MATTERS RELATING TO A PRIOR EXCHANGE OF LANDS, MADE FOR PURPOSES OF A FLOOD-CONTROL CHANNEL AND BOUNDARY SETTLEMENT, IN THE VICINITY OF ALAMEDA CREEK, ALAMEDA COUNTY, CALIFORNIA - W.O. 503.431.

Pursuant to Chapter 353, Statutes of 1955, and the authority contained in the Public Resources Code, the State Lands Commission, on December 20, 1962, authorized an exchange of lands between the State and Leslie Salt Co. in the vicinity of Alameda Creek in order to facilitate the construction and maintenance of the Alameda County Flood Control Channel.

It was intended at that time that the State would retain minerals in all those areas to which it was asserting a claim, even if the surface ultimately would be in private ownership; that Leslie Salt Co. would retain minerals in those areas in the newly aligned channel location that were to be conveyed to the State; and that Leslie would have the minerals in those areas outside the channel exchange and being quieted in Leslie. The parties were not successful in accomplishing this objective.

To reform the State's patent and the Leslie deed to reflect the original intent would result in the State's having mineral interests in irregular parcels, in which it would have no surface rights. This circumstance could also result in a reduced mineral-interest revenue to the State because of the requirement of Section 6401 of the Public Resources Code that the State compensate a surface owner for damage to improvements.

The areas that were exchanged are approximately equal. It appears that the interests of the State can be served best by having the State own the minerals underlying the new channel, to which it has the fee, and by the State's relinquishing its mineral interest in the surrounding irregular parcels conveyed to Leslie Salt Co. This would consolidate the State's ownership into one contiguous area in which the State and the Alameda County Flood Control District would have the entire interest.

The attached Exhibit "AA", when executed and fully performed, would remove the clouds on the titles of the respective parties and would consolidate the mineral ownerships as stated in the previous paragraph (Exhibit "BB", location map).

IT IS RECOMMENDED THAT THE COMMISSION AUTHORIZE THE EXECUTION OF THE AGREEMENT TO CORRECT TECHNICAL MATTERS RELATING TO A PREVIOUS EXCHANGE OF LANDS WITH LESLIE SALT CO., FOR PURPOSES OF A FLOOD-CONTROL CHANNEL AND BOUNDARY SETTLEMENT, IN THE VICINITY OF ALAMEDA CREEK, ALAMEDA COUNTY, CALIFORNIA, AS FULLY SET FORTH IN EXHIBIT "AA" ATTACHED, AND TO EXECUTE ALL OTHER INSTRUMENTS NECESSARY TO PERFORM FULLY THE PROVISIONS THEREOF.

AGREEMENT TO CORRECT TECHNICAL MATTERS RELATING  
TO A PREVIOUS EXCHANGE OF LANDS, FOR PURPOSES  
OF A FLOOD CONTROL CHANNEL AND BOUNDARY  
SETTLEMENT, IN THE VICINITY OF ALAMEDA CREEK,  
ALAMEDA COUNTY, CALIFORNIA

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 1967, by and between the STATE OF CALIFORNIA, acting by and through the STATE LANDS COMMISSION, hereinafter referred to as "State", and the LESLIE SALT CO., a Delaware corporation, hereinafter referred to as "Leslie".

W I T N E S S E T H :

WHEREAS, Leslie, prior to December 19, 1962, claimed title to certain lands in the vicinity of Alameda Creek, County of Alameda, California, as successor in interest to patentees of certain of the lands described in Swamp and Overflowed Land Surveys Numbers 204, 276, 277, 275, 288, 218, 280, Alameda County; Swamp and Overflowed Locations Numbers 3385 and 4164; and Tideland Surveys Numbers 66, 97, 86, 96, 85, 101 and 106, Alameda County;

WHEREAS, the basis of Leslie's claim of ownership was that the descriptions of the property so patented were described by perimeter descriptions and therefore Leslie contended that said patents passed title to all lands included therein;

WHEREAS, the State of California's contention was that certain of the lands included within the aforementioned perimeter descriptions did not pass pursuant to the provisions of said patents, by virtue of the fact that said lands were not subject to alienation by the State under applicable laws;

WHEREAS, the State and Leslie entered into lengthy negotiations concerning their respective interests regarding the property described in said patents;

WHEREAS, by compromise, the State and Leslie reached an understanding regarding the State's asserted interests as within the area described in the aforementioned patents in the vicinity of Alameda Creek, pursuant to which Leslie agreed for purposes of compromise and settlement to recognize State ownership to the bed of Alameda Creek and certain of its tributaries;

WHEREAS, during the negotiations between the State and Leslie, the Alameda County Flood Control and Water Conservation District, hereinafter referred to as "Alameda County Flood Control District", made plans for the straightening and realignment of Alameda Creek, which traverses the lands described in said patents, for the purposes of improving navigation and flood control;

WHEREAS, it was agreed between the State, Leslie and the Alameda County Flood Control District that the State would exchange the lands determined, by aforementioned understanding, to be in the State's ownership, which were outside of the proposed realigned channel, for the lands agreed to be in Leslie ownership within said proposed channel;

WHEREAS, such an exchange of lands and compromise between the State Lands Commission and another person is authorized by the Public Resources Code and Chapter 353 of the Statutes of 1955, and Chapter 353 had the further effect, as to lands conveyed into private ownership by the State, of terminating and freeing the public trust and easement for commerce, navigation and fisheries over such lands, to the extent that such a public trust and easement may have existed over the aforementioned lands;

WHEREAS, the State Lands Commission at its regular meeting on December 20, 1962, after due consideration, found that the proposed exchange between the State and Leslie was ". . . in the best interest of the State and for navigation and flood control purposes and as an aid in reclamation; . . . " and that the lands conveyed to the State were of equal or greater value than the lands conveyed by the State to Leslie;

WHEREAS, on the 21st day of December, 1962, pursuant to the authorization of the State Lands Commission, the State issued a patent to Leslie, which was designated as Sovereign Land Location No. 32 - Alameda County, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference, of the lands which were received from the State by Leslie in the exchange and, additionally, of the lands in the vicinity of Alameda Creek and certain of its tributaries as to which the State agreed that the State had no title, which had the combined effect of quieting Leslie's title and of terminating said public trust and easement as to all lands described therein, and that contemporaneously with the delivery of said patent, Leslie delivered a conveyance to the State, in the form of a deed executed December 19, 1962, of the interest of Leslie within the proposed realigned channel of Alameda Creek, a copy of said deed being attached hereto as Exhibit "B" and incorporated herein by reference;\*

WHEREAS, it was the intent of the State and Leslie, after the aforementioned conveyances between them, that: (1) the State would have the fee title, including mineral rights, to those portions of Alameda Creek and certain of its tributaries agreed for purpose of compromise to be in State ownership within the aforementioned proposed straightened and realigned channel; (2) the State would retain the mineral interests in those portions of Alameda Creek and certain of its tributaries outside said channel which were exchanged for lands of Leslie within the said channel; (3) Leslie would retain mineral interests in those lands within said channel which Leslie exchanged with the State for lands outside said channel; and (4) Leslie would have fee title, including minerals, as to the additional areas included in the State's patent to Leslie for purposes of quieting Leslie's interests therein;

WHEREAS, pursuant to the aforementioned intent of the State and Leslie, reservations were included in said patent and deed of the State and Leslie, respectively, which were unsuccessful in accomplishing said intent;

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\*Leslie also simultaneously conveyed an easement for an access channel across certain additional lands which is not involved in nor affected by this agreement. Said easement is recorded on Reel 770 Images 648-652 of Official Records of Alameda County, California.

WHEREAS, contrary to said intent of the parties, the aforementioned reservations erroneously did not correctly describe the mineral interests to be retained by the respective parties, to wit: (1) in the case of the State's patent to Leslie, the State erroneously reserved minerals to all lands described in the patent rather than only reserving the minerals within the lands of the State which were exchanged for the lands of Leslie within the proposed realigned channel, as intended; and (2) in the case of Leslie's deed to the State, Leslie erroneously reserved the mineral rights as to all areas within the proposed realigned channel, including portions thereof which for purposes of said exchange and compromise it was agreed were in State ownership by virtue of their being within the bed of Alameda Creek or certain of its tributaries;

WHEREAS, the aforementioned errors have impaired the titles of the State and Leslie to their respective lands;

WHEREAS, to reform the State's patent to reflect the State's reserved mineral interests only in the areas which were exchanged for Leslie property in the realigned channel, would result in the State's having mineral interests in irregular parcels of property, the surface interests to which would be in Leslie, or its successors and assigns, and therefore, if the minerals thereunder were ever developed by the State, would result in a reduced return to the State due to the fact that under Public Resources Code Section 6401 the authorized agent of the State would have to compensate the surface owner for any damages to improvements caused by the taking of the minerals;

WHEREAS, the areas of the lands the State and Leslie exchanged were approximately equal and it is more desirable for the State to have the mineral interests in the lands of Leslie which were conveyed to the State in the realigned bed of Alameda Creek, in order to avoid the limitations which would be imposed by the State's exploitation of the mineral interests, rather than for the State to retain minerals in the areas originally contemplated by the parties;

WHEREAS, it therefore would appear that the original intent of the State and Leslie can best be accomplished by correcting the aforementioned deed and patent to omit the reservations of mineral interests;

WHEREAS, Public Resources Code Section 6401, which provides that the State retains the mineral interests in all lands which are conveyed by the State, excepts from the applicability of said section any compromise agreement, and the basis of the aforementioned exchange between Leslie and the State was the compromise understanding as to the respective interests of each;

WHEREAS, additional errors are contained in the State patent to Leslie in that the State and Leslie did not intend the bayward boundaries of the State's patent to Leslie to extend bayward of the shore of San Francisco Bay but the description of said boundaries extended bayward of said shore; and through inadvertence certain parcels of lands which have never been owned by Leslie were included in the description of the lands described in the State patent and it was not the intent of the parties hereto, to in any way affect said parcels of lands (legal descriptions of said parcels are set forth in Exhibit "E" attached hereto and incorporated herein by reference);



WHEREAS, the State and Leslie are in agreement that the description contained in the State's patent should be corrected to reflect the mutual understanding of the parties regarding said bayward boundary and to remove any possible cloud upon the aforementioned parcels which have never been in Leslie's ownership;

WHEREAS, subsequent to the exchange of the aforementioned patent and deed, Leslie filed a quiet title action against the State, entitled "Leslie Salt Co., a corporation, Plaintiff, vs. State of California, Defendant, in the Superior Court of the State of California in and for the County of Alameda, Case No. 328991";

WHEREAS, the aforementioned errors were not discovered until the State filed an answer in the aforementioned action;

NOW, THEREFORE, in consideration of the mutual promises of the parties hereto to correct the aforementioned errors in the patent of the State and deed of Leslie, it is hereby agreed as follows:

1. Leslie shall correct the December 19, 1962, deed of Leslie to the State by delivering a Quitclaim Deed to the State of all of Leslie's right, title and interest to the minerals within the lands described in Exhibit "B". The form of said deed shall be as set forth in Exhibit "C", which is attached hereto and incorporated herein by reference.

2. The State shall issue to Leslie a corrective patent in which the aforementioned reservation of minerals is deleted and the description of the properties described therein shall be corrected to conform to the shoreline of San Francisco Bay and to exclude parcels of lands never owned by Leslie. The form of said corrective patent shall be as set forth in Exhibit "D", which is attached hereto and incorporated herein by reference.

3. When the aforementioned Quitclaim Deed of Leslie and corrective patent of the State have been exchanged by the State and Leslie, each of the parties hereto consents to the filing of appropriate amended pleadings of the other in the case of Leslie Salt Co., a corporation, Plaintiff, vs. State of California, Defendant, in the Superior Court of the State of California, in and for the County of Alameda, Case No. 328991.

4. This agreement may be introduced in evidence in any legal proceeding between the State and Leslie, or their successors or assigns.

5. Leslie shall issue a quitclaim deed or deeds of any right, title and interest it may have received by virtue of the State patent attached hereto as Exhibit "A" (which will be corrected by virtue of this agreement) to those certain parcels of lands described in Exhibit "E" hereof to the present owners of record of said parcels as their interests may appear, in order to remove any cloud which may exist upon said lands as a result of the State's patent set forth in Exhibit "A" hereof.

6. This agreement shall become effective when approved by the State Lands Commission and executed by the Executive Officer of said Commission.

7. The rights, titles, interests, claims or assertions of either party to this agreement regarding lands not specifically described in either Leslie's deed to the State or the State's corrective pater+ to Leslie shall be unaffected by this agreement or any acts in pursuance of the provisions hereof. Nothing herein shall constitute a waiver as to either party's rights, titles, interests, claims or assertions regarding said lands which are not so specifically described.

IN WITNESS WHEREOF, the parties hereto have executed this agreement.

LESLIE SALT CO.

By \_\_\_\_\_

By \_\_\_\_\_

STATE OF CALIFORNIA }  
COUNTY OF } ss:

On \_\_\_\_\_, 1967, before me, the undersigned, a Notary Public in and for the County of \_\_\_\_\_, State of California, personally appeared \_\_\_\_\_ and \_\_\_\_\_, known to me to be the \_\_\_\_\_ and \_\_\_\_\_ respectively, of LESLIE SALT CO., the corporation described in and to execute the within instrument and known to me to be the persons who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public in and for said County and State

STATE OF CALIFORNIA,  
STATE LANDS COMMISSION

By \_\_\_\_\_  
F. J. HORTIG, Executive Officer

STATE OF CALIFORNIA     )  
                              )  
COUNTY OF LOS ANGELES    ) ss:

On \_\_\_\_\_, 1967, before me, the undersigned, a Notary Public in and for the County of Los Angeles, State of California, personally appeared F. J. HORTIG, known to me to be the Executive Officer of the STATE LANDS COMMISSION, STATE OF CALIFORNIA, and known to me to be the person who executed the within instrument on behalf of said State Commission, and acknowledged to me that said Commission executed the within instrument pursuant to applicable State law and a resolution of said Commission.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public in and for the County  
of Los Angeles, State of California

The foregoing agreement is hereby approved as to form:

LANDELS, RIPLEY, GREGORY & DIAMOND

\_\_\_\_\_, 1967 By \_\_\_\_\_  
Attorneys for LESLIE SALT CO.

THOMAS C. LYNCH, Attorney General

\_\_\_\_\_, 1967 By \_\_\_\_\_  
N. Gregory Taylor,  
Deputy Attorney General  
Attorneys for STATE OF CALIFORNIA,  
STATE LANDS COMMISSION

EXHIBITS "A" THROUGH "E" REFERRED TO HEREIN ARE ON FILE IN THE OFFICE OF  
THE STATE LANDS COMMISSION IN W.O. 503.431 AND BY REFERENCE ARE HEREBY  
MADE A PART HEREOF.