

38. AUTHORIZATION FOR EXECUTION AND DELIVERY OF PATENTS EXCHANGING AND CONFIRMING TITLE TO LANDS PREVIOUSLY INCLUDED WITHIN EARLY STATE PATENTS TO PRIVATE PARTIES AND ACCEPTANCE OF DEEDS FROM RECORD TITLE HOLDER CONFIRMING TITLE OF AND EXCHANGING TITLE TO THE STATE TO CERTAIN LANDS SURROUNDING THE SOUTHERLY PORTION OF SAN FRANCISCO BAY; ALAMEDA, SANTA CLARA, AND SAN MATEO COUNTIES. (STATE-LESLIE SALT CO. BOUNDARY AGREEMENT AND LAND EXCHANGE)- W.O. 1339.

During consideration of Calendar Item 37 attached, the Executive Officer read into the record four letters, as follows:

1. Bay Land Area Study Team (BLAST), dated January 22, 1968, signed by Luman C. Drake, addressed to the State Lands Commission, expressing resentment against the proposal, and requesting: (1) A tabular compilation of original patentees, statute authorizing sale, plat of survey, where recorded; (2) Total disclosure of appraisals and assumptions proving the Leslie Slough Swap is in the public interest; (3) Permission for members of the Bay Land Area Study Team to look in W.O. 1339 without its first being purged.
2. Council for Governmental Responsibility, dated January 24, 1968, signed by Marcella Jacobson, addressed to the Chairman of the Commission, stating that the appraisal report concerning this matter is vital to an intelligent and equitable resolution of the problem, and (1) insisting that copies of the complete appraisal report (without modifications or deletions) be made available immediately to the public; (2) that no decision on this matter of the exchange and boundary settlement be made at the Commission meeting of January 26, 1968; and (3) that there be no decision on the matter by the Commission until the public has had ample time to study the appraisal report and make known its findings and opinions to the Commission in public hearings.
3. Save San Francisco Bay Association, two separate letters, both dated January 24, 1968, but received on different dates, opposing the exchange in its present form.
4. City of Mountain View, dated January 22, 1968, signed by John T. O'Halloran, City Manager, urging favorable consideration of the settlement proposal at the Commission's meeting of January 26, 1968.

A full report on the three conferences and two public hearings held on this transaction is included in the calendar item, copies of which were distributed to all interested persons attending the Commission meeting. A large map was posted of the areas in question, and smaller copies of this same map were distributed to those present.

Appearances were made by the following:

1. Richard Dombink, Chief, Real Estate Branch, Alameda County and Alameda County Flood Control District, who stated that they were interested in having the exchange consummated.

2. Mrs. Helen L. Freeman, Alameda Conservation Association, who opposed the transaction, and recommended that it be studied further as to whether the State Constitution is paramount over a statute of the Legislature.
3. William Siri, President, Save San Francisco Bay Association, stating that they could not support the present proposal until there is further clarification and they can examine some of the underlying precedents that were used in arriving at the proposed exchange.
4. Lewis H. Butler, Member, Save San Francisco Bay Association, who opposed the transaction on the basis of incomplete knowledge as to the appraised values involved, and indicated that citizens groups would like to present appraisal information; he asked that the Commission take time to have the transaction looked into by others than the State Lands Division staff.
5. Harry Jackson, of Leslie Salt Co., who took issue with some statements made by Mr. Butler and asked that the record show that Leslie Salt Co. had its own appraisal made some years ago on a fee ownership basis.
6. Walter Cooper, a resident of Foster City, who complained about the filling in of Seal Creek (Angelo Slough), and opposed the transaction.

For further details, see the verbatim transcript prepared by the hearing reporter, copy of which is on file in the Los Angeles Office of the State Lands Division.

UPON MOTION DULY MADE AND UNANIMOUSLY CARRIED, THE FOLLOWING RESOLUTION WAS ADOPTED:

THE STATE LANDS COMMISSION APPROVES THE PROPOSED BOUNDARY SETTLEMENT AND LAND EXCHANGE BETWEEN THE STATE OF CALIFORNIA AND THE LESLIE SALT CO., AND AUTHORIZES THAT ALL NECESSARY LEGAL AND EXECUTIVE STEPS BE TAKEN TO CONSUMMATE THAT SETTLEMENT AND THAT EXCHANGE OF LANDS. IN CONNECTION THEREWITH,

I. THE COMMISSION FINDS:

1. THAT THE SUBJECT BOUNDARY SETTLEMENT AND LAND EXCHANGE IS NECESSARY IN ORDER TO SETTLE AND CONFIRM THE TITLE OF THE STATE AND TO ESTABLISH THE BOUNDARIES THEREOF;
2. THAT THE LAND EXCHANGE IS IN THE INTEREST OF COMMERCE, NAVIGATION, FISHERIES, AND RECLAMATION;
3. THAT THE VALUE OF THE INTERESTS OF THE STATE IN THE PARCELS OF LAND TO BE CONVEYED BY IT IS NO GREATER THAN THE VALUE OF THE INTERESTS TO BE ACQUIRED BY THE STATE; AND

II. THE COMMISSION AUTHORIZES THE EXECUTIVE OFFICER:

1. TO ACCEPT ON BEHALF OF THE STATE OF CALIFORNIA AND THE STATE LANDS COMMISSION DEEDS CONVEYING TO THE STATE OF CALIFORNIA THOSE LANDS DESCRIBED AS PARCELS "A" THROUGH "S" ON FILE IN THE OFFICE OF THE STATE LANDS COMMISSION AND BY REFERENCE MADE A PART HEREOF;
2. TO EXECUTE AND DELIVER CERTIFICATES AND PATENTS TO LESLIE SALT CO., A DELAWARE CORPORATION, TO THE LANDS DESCRIBED AS PARCELS A-1 THROUGH A-18, SC-1 THROUGH SC-10, AND PARCELS SM-1 THROUGH SM-12 ON FILE IN THE OFFICE OF THE STATE LANDS COMMISSION AND BY REFERENCE MADE A PART HEREOF, RESERVING AND EXCEPTING THOSE INTERESTS SPECIFIED AS PARCELS 1 THROUGH 19 ON FILE IN THE OFFICE OF THE STATE LANDS COMMISSION AND BY REFERENCE MADE A PART HEREOF;
3. TO RECEIVE A POLICY OF TITLE INSURANCE, IN LIMITED EXTENDED COVERAGE FORM, GUARANTEEING THE TITLE OF THE STATE TO THE LANDS DESCRIBED IN 1 ABOVE, IN THE AMOUNT OF \$3,000,000;
4. TO CAUSE ALL DOCUMENTS OF TITLE RECEIVED BY THE STATE BY VIRTUE OF THIS BOUNDARY SETTLEMENT AND EXCHANGE TO BE RECORDED IN THE RESPECTIVE COUNTIES OF ALAMEDA, SANTA CLARA, AND SAN MATEO.

Attachment  
Calendar Item 37 (5 pages)

37.

AUTHORIZATION FOR EXECUTION AND DELIVERY OF PATENTS EXCHANGING AND CONFIRMING TITLE TO LANDS PREVIOUSLY INCLUDED WITHIN EARLY STATE PATENTS TO PRIVATE PARTIES AND ACCEPTANCE OF DEEDS FROM RECORD TITLE HOLDER CONFIRMING TITLE OF AND EXCHANGING TITLE TO THE STATE TO CERTAIN LANDS SURROUNDING THE SOUTHERLY PORTION OF SAN FRANCISCO BAY; ALAMEDA, SANTA CLARA AND SAN MATEO COUNTIES - W.O. 1339.

Twenty years ago, in 1947, long prior to general public interest in the preservation of San Francisco Bay, the State Lands Commission, cognizant of the implication for public interest in the bay, challenged the title assertions of Leslie Salt Co. to certain portions of Ravenswood and West Point Sloughs by opposing Leslie's application for permission from the Army Corps of Engineers to dredge those waterways. From that challenge has evolved the present boundary settlement and exchange in which 1601 acres will be confirmed, conveyed or exchanged in fee to the State, together with the fixing of the boundaries to an additional 217 acres of State land. Significantly, the proposed boundary settlement and exchange preserves the present condition of San Francisco Bay and the tributaries thereto and does not allow further filling.

The source of the controversy between the State and Leslie Salt Co., which necessitates the present boundary settlement and exchange, is the State's assertion that, although included within the description of lands set forth in early State patents to private parties, submerged land did not in fact pass into private ownership and tidelands so included were subject to a public easement of commerce, navigation and fisheries. Leslie's position was and is that it has absolute title to all lands included as part of the proposed boundary settlement and exchange by virtue of them having been unqualifiedly included within the descriptions in State patents issued prior to the insertion of the prohibition of the sale or alienation of tide and submerged lands into the 1879 California Constitution and issued prior to the 1870 or 1872 Curative Acts of the State Legislature curing any defects which may have existed in the State patents. It should also be noted that the State's claim has been made in the face of the fact that all of the lands included in the proposed boundary settlement and exchange, with the exception of two small parcels in Alameda County, were originally conveyed to the State as Swamp and Overflowed Lands under the provisions of The Arkansas Act, the purpose of which was to have the State reconvey the lands to private parties for reclamation. The State's position has been that tide and submerged lands could not have had their character altered by an action or actions of the federal government including them within areas designated as swamp and overflowed lands. The proposed boundary settlement and exchange is based upon this position.

For purposes of this boundary settlement and exchange, Leslie Salt Co. has agreed that the green areas on the attached map and portions of the red areas are tide and submerged lands. The State will transfer its interests in green to the red and orange areas which will allow for a consolidation and widening of State ownership in the present tributaries of San Francisco Bay maximizing their preservation of public waterways and availability for public use. Under the proposal, this will be accomplished by the exchange of a deed from Leslie

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Salt Co. to the State and a patent from the State to Leslie Salt Co. Since the subject lands are located in three counties, there will actually be one deed and one patent for each county. (Copies of the deed and patent are attached hereto as Exhibits "A" and "B", respectively. The descriptions to be incorporated in said deeds are on file in the Offices of the State Lands Commission. (Specific provision is made in the State's patents to insure that the easement of commerce, navigation and fishery is not terminated as to areas connected to navigable waters which will be quieted in Leslie.) In addition, Leslie Salt Co. will provide the State with a title insurance policy, limited extended coverage form, in the amount of \$3,000,000, guaranteeing the title recognized, confirmed and exchanged to the State by this proposed settlement.

Several approaches were attempted during the 20 year period in seeking to resolve the problem. One of these included litigation in 1951 of a limited portion of the area now involved. So many complex problems arose during the course of the litigation that after more than six weeks of trial the Court dismissed the action and suggested that the parties resolve the matter through negotiations.

In 1959, the Legislature moved into the problem and enacted Chapter 1885 to provide an expeditious method for the settlement of the outstanding problems. Section 1 of that act provides that:

"The State Lands Commission is hereby authorized to convey to any person or corporation all right, title and interest of the State in and to parcels of land, except land used for highway purposes, lying in the vicinity of San Francisco Bay southerly of latitude 37° 40' and being in Alameda, Santa Clara or San Mateo County, in exchange for and upon there being conveyed to the State by such person or corporation all right, title and interest of such person or corporation in other parcels of land lying in the same vicinity if the commission finds:

(a) that such exchange is necessary in order to settle and confirm the title of the State in and to the parcels to be conveyed to it and to establish the boundaries thereof, and

(b) that such exchange is in the interest of the promotion of commerce, navigation and reclamation, and

(c) that the value of the interests of the State in the parcels of land to be conveyed by it is no greater than the value of the interests to be acquired by the State in such other parcels of land in such exchange.

Such findings, if and when made by the commission, shall be conclusive and binding upon all persons. The commission shall determine the parcels to be conveyed by the State and the parcels to be conveyed to the State in such exchange."

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Section 2 states that such an exchange is authorized for the purpose of promoting commerce, navigation, flood control and reclamation. It also provides that lands conveyed by the State pursuant to such an exchange shall be free of the easement of commerce, navigation and fisheries.

Section 3 requires a public hearing prior to such an exchange if one is requested by an affected city or county.

Section 4 states that any exchange entered into under the provisions of the act is deemed a compromise agreement entered into under provisions of the Public Resources Code which therefore allows the exchange of mineral interests.

Section 5 allows grantees of any lands conveyed pursuant to the act by the State to sue the State to quiet title lands by judicial proceedings.

With the passage of Chapter 1885 study of the lands in question was intensified. An aerial photogrammetric survey was made by an independent engineering firm of the lands in question. Sloughs, channels, and shorelines were plotted. Additional extensive engineering was done by the State Lands Division and Leslie. The State checked the sloughs and channels shown for accuracy of descriptions and against historic maps showing their previous condition. Computations of acreages were prepared and compared.

An independent appraiser was retained. He placed a value of \$2,869,350 on the lands to be confirmed and exchanged to the State and a value of \$1,170,200 on the lands to be confirmed or exchanged to Leslie Salt.

The State Lands Commission, at its meeting of August 18, 1964, specifically made the finding that the three requirements of Chapter 1885 had been fulfilled by the proposed transaction and authorized the publication of notice of the Commission's intention to exchange the subject lands. The notice, as published and in conformity with Chapter 1885, invited any affected city or county to request a hearing. Such a request having been made, the Commission at its meeting on December 17, 1964, authorized the Executive Officer to conduct a public hearing during the month of January 1965.

The public hearing was held on January 14, 1965, in Oakland. Due to continued public interest a second public hearing was held in City of San Mateo on December 8, 1966.

The primary problem encountered during those hearings was to explain adequately how, in the opinion of the staff, the proposed transaction allowed for the preservation of San Francisco Bay and its tributaries, as well as recognition of State ownership in such an area of the bay (no other large bay area landowner has recognized any State assertion of interest in such lands). Additionally, public concern was expressed over the preservation of the bay, the effect on planning and the criteria and methods used by the State to arrive at the proposed transaction.

Since the two public hearings, the State Lands Division, in conjunction with the Office of the Attorney General have taken particular pains to insure the

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public interest by intensive verification of all boundary descriptions to determine beyond question that no encroachment of the bay would result from the proposed settlement; by producing a new map which delineates the settlement pictorially in greater detail and with more comprehensiveness than has been the case heretofore; by evaluating all public comments received in hearings and otherwise, to determine their applicability not only to technical aspects but also, and perhaps more importantly, to the societal consequences of the settlement; and by conducting a new and highly sophisticated appraisal which, among other important factors, included giving values to the public easements where applicable.

The State Lands Division has made the new appraisal taking into consideration the easement of commerce, navigation and fisheries, and has concluded that the statutory requirement of Chapter 1885 regarding value has been met. The summary of values from that latest appraisal report is attached hereto as Exhibit "C" and incorporated herein by reference.

Having completed this review, the State Lands Division, together with a representative of the Office of the Attorney General have spent almost all of this month of January meeting with interested individuals and groups.

At the request of the State Lands Commission, three meetings with government officials and the press were held in the Cities of San Leandro, Palo Alto and Redwood City on January 9, 1968, January 10, 1968, and January 11, 1968, respectively. Interested citizens also attended those meetings. In addition, an evening hearing (8:00 p.m.) in the City of Santa Clara was held for the general public. (A copy of the transcript of the public hearing was distributed to each member of the Commission several days in advance of this meeting.)

The objectives of the meetings and the public hearing were to informally explain the proposed boundary settlement and exchange and to answer any questions raised by those present. The response to these efforts was greatly encouraging, and it would appear that public appreciation and acceptance of the transaction was increased as a result.

It is the opinion of staff that the proposed boundary settlement and exchange constitutes a precedent in favor of public ownership and interest in San Francisco Bay and will allow for increased public use of the bay's tributaries through recognition of State ownership. It is also the staff's opinion that litigation could not result in any more favorable decision for the State, and in fact might jeopardize the recognition of the State's interest that has been achieved in the proposal. The Office of the Attorney General concurs in these opinions.

IT IS RECOMMENDED THAT:

I. THE COMMISSION FIND:

1. THAT THE SUBJECT BOUNDARY SETTLEMENT AND EXCHANGE IS NECESSARY IN ORDER TO SETTLE AND CONFIRM THE TITLE OF THE STATE AND TO ESTABLISH THE BOUNDARIES THEREOF;

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2. THAT THE EXCHANGE IS IN THE INTEREST OF COMMERCE, NAVIGATION, FISHERIES AND RECLAMATION;
3. THAT THE VALUE OF THE INTERESTS OF THE STATE IN THE PARCELS OF LAND TO BE CONVEYED BY IT IS NO GREATER THAN THE VALUE OF THE INTERESTS TO BE ACQUIRED BY THE STATE; AND

II. AUTHORIZE THE EXECUTIVE OFFICER:

1. TO ACCEPT ON BEHALF OF THE STATE OF CALIFORNIA AND THE STATE LANDS COMMISSION DEEDS CONVEYING TO THE STATE OF CALIFORNIA THOSE LANDS DESCRIBED AS PARCELS "A" THROUGH "S" ON FILE IN THE OFFICE OF THE STATE LANDS COMMISSION AND BY REFERENCE MADE A PART HEREOF;
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