

MINUTE ITEM

2. BARTHOLD CLYDE - HIDDEN HARBOR MARINA; PROPOSED BOUNDARY LINE AGREEMENT;
REPORT TO THE COMMISSION ON STATUS OF THE PROBLEM - W.O. 320.534; W.O. 220.19.

The Executive Officer presented a summary of the problem to the Commission, and recommended consideration of an interim lease, at a nominal rental, to permit development to proceed prior to final resolution of the title problems.

Mr. George Basye, attorney with the law firm of Downey, Brand, Seymour & Rohmer, Sacramento, representing the petitioners, made a presentation to the Commission. Mr. Barthold Clyde spoke briefly to the Commission also. After extended discussion, the Chairman recommended that the petitioners give every consideration to the suggested lease during the interim period of resolution. Mr. Basye stated that he would continue to confer on the matter with the Division and the office of the Attorney General.

Attachment

Calendar Item 1 (2 pages)

9/17/68

CLYDE - HIDDEN HARBOR

It would appear at the outset that a brief review of how the problem before the Commission today arose is essential, in addition to a summary of the questions which have developed, and a suggestion for an interim solution to minimize the problems of uncertainty of title for Mr. Clyde.

Any development of State lands under navigable waters requires a permit from the U.S. Army Corps of Engineers and authorization by the State Lands Commission. The first information the State Lands Division received on this matter was the publication by the Corps on May 18, 1967, of the application of Mr. Clyde for a permit to dredge State lands for the development of a marina. Mr. Clyde was informed of the statutory requirement for Lands Commission authorization. From an evaluation of the program proposed by Mr. Clyde, it appeared that State-owned land was being claimed by him as private property.

Referring to this map, there are shown the outer boundaries of Swamp and Overflowed Lands Sale #131, containing 71.05 acres adjoining Steamboat Slough as of 1859. This is all of the land ever sold by the State at the southern end of the area which was reclaimed and named RYER ISLAND. The area now occupied

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and claimed by Mr. Clyde by reason of a deed, accumulated in the bed of the slough waterward of the reclamation levee subsequent to the State land sale, as shown by this overlay. If this land accumulation or accretion is the result of artificial influences by reason of operations of man, then title to the accreted land in the bed of Steamboat Slough is still held by the State of California. Historically, many artificial accumulations have been initiated through levee construction. In the Sacramento River drainage system, particularly, hydraulic mining debris has also provided a large artificial source of debris for such accumulations.

Mr. Clyde has requested agreement to a boundary line essentially at the present edge of the water. The Lands Division has been counseled by the Office of the Attorney General that the State's claim to the accreted lands appears valid and substantial and should not be waived by action of the Commission. Therefore, as early as March of this year, the Division suggested to Mr. George Basye, attorney for Mr. Clyde, that a recommendation could be presented for Commission consideration for an interim lease of the contested area, at a nominal rental, to permit development to proceed prior to final resolution of the title problems.

No acceptance or rejection of this suggestion has been received to date.

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In conclusion, I wish to emphasize to the Commission that the Division has had only one goal in this matter -- the equitable resolution of the problem for Mr. Clyde, within the constraints imposed by law. In the attempt to secure effective suggestions for such resolution, copies of much of the data developed in the Division evaluation have been furnished to Mr. Basye with the request that he similarly furnish any evidence on which a conclusion could be based.

CALENDAR ITEM

9/68
W.O. 320.534

1.

BARTHOLD CLYDE -- HIDDEN HARBOR MARINA
PROPOSED BOUNDARY LINE AGREEMENT

Petitioners: Mr. & Mrs. Barthold Clyde

Requested By: Downey, Brand, Seymour & Rohwer, Attorneys at Law,
1007 Seventh Street, Sacramento, California 95814,
Mr. George Basye

Subject: Petitioner's request to establish ordinary high water mark
by boundary line agreement

Land Location: Solano County, island known as Hidden Harbor Marina, located
outside the levee at the southerly tip of Ryer Island

This matter is before the Commission on the written request of petitioners, dated August 2, 1968, that the Commission authorize a boundary line agreement at the present water boundary of the lands claimed by them at Ryer Island, Solano County.

Current Status

1. Petitioners purchased the subject land from private parties by Grant Deed dated March 4, 1966, recorded in Book 1393, page 280, Solano County.
2. By Public Notice of the U.S. Army Corps of Engineers, dated May 18, 1967, it came to the attention of the Division that petitioners intended to enter into construction work on the island. By letter of June 6, 1967, the staff advised Mr. Clyde of the necessity of a dredging permit, and requested further information from him. At that time the Division interposed an objection to the Clyde application to the Corps pending an application by Mr. Clyde for a permit to dredge State lands.

On September 22, 1967, Mr. Clyde was again requested to supply further information. Engineering review showed that the entire lands upon which construction was proposed were located outside patented lands and were owned by the State in its sovereign capacity. Mr. Clyde was so advised on December 18, 1967, and a list of lease requirements was sent to him.

3. Since then the Division has had numerous contacts with the Clydes and their attorneys. The Division has conducted further engineering computations, conducted a search for and a review of historical and record data and maps, engaged in legal analyses, obtained scientific evidence including soil sampling, and has generally attempted to give full consideration to the various problems involved. No agreement on boundary location has been reached with the Clydes.

CALENDAR ITEM 1 (CONTD.)

4. The difficult position in which the Clydes have found themselves is ~~recognized fully by the Division. The land that they claim is available~~ for lease pursuant to general statutes authorizing the leasing of sovereign lands. Therefore, the Division has offered to recommend a long-term lease to the Clydes, according to law and the Rules and Regulations of the Commission, at an annual rental of \$150.00 pending the outcome of litigation to resolve the conflicting claims of ownership, subject to readjustment of the rent upon settlement of the title. The Clydes have not responded to this offer.
5. No litigation has been instituted.
6. The Clydes have filed a request for hearing before the State Lands Commission.

Discussion

Investigation of the Clydes' claim is being conducted on a continuing basis by the Division. Upon consideration of all the evidence available currently, it has been concluded that the Division is unable, as a matter of law, to recommend the boundary line agreement proposed by petitioners, on the ground that the available evidence is clearly insufficient to justify a waiver of the State's title to the land in question.

The office of the Attorney General also has reviewed this matter and concurs with the conclusions of the Division.