

26. BOUNDARY LINE AGREEMENT BETWEEN THE STATE OF CALIFORNIA AND SHELLMAKER, INC., A CALIFORNIA CORPORATION, ESTABLISHING THE ORDINARY HIGH WATER MARK ALONG A REACH OF THE LEFT BANK OF THE PETALUMA RIVER, SONOMA COUNTY, UPSTREAM BUT NEAR THE CONFLUENCE OF SAID RIVER WITH SAN PABLO BAY - W-8617, B.L.A. 121.

After consideration of Calendar Item 9 attached, and upon motion duly made and carried, the following resolution was adopted:

THE COMMISSION ADOPTS THE FOLLOWING RESOLUTION:

IT IS HEREBY RESOLVED THAT, PURSUANT TO THE PROVISIONS OF SECTION 6357 OF THE PUBLIC RESOURCES CODE, ESTABLISHMENT BY AGREEMENT OF THE ORDINARY HIGH WATER MARK ALONG A PORTION OF THE LEFT BANK OF THE PETALUMA RIVER, SONOMA COUNTY, CALIFORNIA, IS EXPEDIENT AND NECESSARY AND IN THE BEST INTERESTS OF THE STATE; AND THAT CERTAIN AGREEMENT BY AND BETWEEN THE STATE OF CALIFORNIA, ACTING BY AND THROUGH THE STATE LANDS COMMISSION, AND SHELLMAKER, INC., A CALIFORNIA CORPORATION, PERMANENTLY FIXING AND ESTABLISHING THE LAST NATURAL ORDINARY HIGH WATER MARK AT THE LOCATION AS HEREINAFTER DESCRIBED, IN COMPROMISE AND SETTLEMENT OF THE PARTIES DISPUTE AS TO THE LOCATION OF SAID ORDINARY HIGH WATER MARK, IS HEREBY APPROVED AND ACCEPTED; AND THE EXECUTIVE OFFICER OF THIS COMMISSION IS HEREBY AUTHORIZED AND DIRECTED, BY AND ON BEHALF OF THIS COMMISSION AND THE STATE OF CALIFORNIA, TO EXECUTE SUCH AGREEMENT, ANY SURVEY OF SUCH AGREED ORDINARY HIGH WATER MARK, ANY ESCROW INSTRUCTIONS, AND ALL OTHER DOCUMENTS AS MAY BE NECESSARY OR CONVENIENT TO CARRY OUT THE PURPOSES OF SUCH AGREEMENT, TO SUBMIT THE AGREEMENT TO THE GOVERNOR FOR APPROVAL AND TO DETERMINE AND AUTHORIZE TITLE EXCEPTIONS TO WHICH THE STATE MAY TAKE SUBJECT. THE DESCRIPTION OF SUCH AGREED ORDINARY HIGH WATER MARK IS AS FOLLOWS: COMMENCING AT THE MOST EASTERLY CORNER OF THAT PARCEL OF LAND DESCRIBED IN BOOK 1997, OFFICIAL RECORDS, PAGE 719, SONOMA COUNTY RECORDS; THENCE S. 80° 11' 21" E 1413.08 FEET TO A 3½" BRONZE DISC STAMPED "STA 35, 1970, R.C.E. 7663"; THENCE N 82° 52' 31" W 324.87 FEET TO A 1" DIAMETER STATE LANDS COMMISSION TAG STAMPED "R.C.E. 7663"; THENCE CONTINUING N 82° 52' 31" W 97.54 FEET TO THE NORTHWESTERLY RIGHT-OF-WAY LINE OF THE NORTHWESTERN PACIFIC RAILROAD AND THE TRUE POINT OF BEGINNING; THENCE CONTINUING N 82° 52' 31" W 910.09 FEET TO A 3½" BRONZE DISC STAMPED "A-3, 1970, R.C.E. 7663"; THENCE CONTINUING N 82° 52' 31" W 134.11 FEET TO THE SOUTHEASTERLY LINE OF THE PARCEL OF LAND RECORDED IN BOOK 1997, OFFICIAL RECORDS, PAGE 719 AND THE END OF THE HEREIN DESCRIBED LINE FROM WHICH THE SAID POINT OF COMMENCEMENT BEARS N 46° 52' 37" E 86.14 FEET.

Attachment:

Calendar Item 9 (2 pages)

CALENDAR ITEM

10/70

W-8617

B.L.A. 121

9.

BOUNDARY LINE AGREEMENT BETWEEN THE STATE OF CALIFORNIA AND SHELLMAKER, INC., A CALIFORNIA CORPORATION, ESTABLISHING THE ORDINARY HIGH WATER MARK ALONG A REACH OF THE LEFT BANK OF THE PETALUMA RIVER, SONOMA COUNTY, UPSTREAM BUT NEAR THE CONFLUENCE OF SAID RIVER WITH SAN PABLO BAY.

The Division has negotiated an Agreement with Shellmaker, Inc., a California Corporation, for the establishment of the Ordinary High Water Mark, pursuant to Public Resources Code Section 6357, along a reach of the left bank of the Petaluma River, in Sonoma County, southerly of State Highway No. 8, Black Point Bridge, and northerly of San Pablo Bay, near the mouth of the Petaluma River.

The bank of the waterway at this location has shifted waterward over the years by causes that are uncertain and the subject of dispute.

By reason of the uncertainties and the costs of litigation, the Division has negotiated this Agreement to establish the Ordinary High Water Mark by way of a compromise. The waterway is leveed and is presently in an artificial state, and such Ordinary High Water Mark is being established by this Agreement as a permanent fixed line rather than as a meander line.

By Deed of Trust dated December 1, 1968, recorded December 16, 1968, as Recorder's Serial Number L-2878, Shellmaker, Inc., as trustor, conveyed the said uplands to Sonoma County Abstract Bureau, a Corporation, Trustee, in trust for the payment of certain sums by trustor to S. K. Herzog Company, a Partnership, beneficiary thereunder. Said beneficiary has refused to enter into this Agreement, after request by the Division, on the ground that he had not consulted with counsel and that signature of the beneficiary, in consideration of the sums remaining due under the Deed of Trust, was not essential. The Division is advised by the beneficiary that the cost of improvements placed on the uplands since the date of the purchase by Shellmaker, Inc., and of the said Deed of Trust (which improvements have been inspected by the Division) exceed the sums due under the said Deed of Trust. It appears to the Division that the Agreement should be entered into subject to said Deed of Trust on the grounds that: (1) The settlement of boundary locations is in the interest of the State; (2) The owner in possession is agreeable with the agreed boundary, and a failure to enter into this Agreement with him will leave open questions of uncertain boundaries, possible trespass, and possible State loss of land and subject to a considerable expenditure of time and funds by the State to prepare the matter for litigation, which appears to be the only alternative to the Agreement; (3) Although the Agreement will not bind the Deed of Trust beneficiary, the interest of the beneficiary would only become important upon default of Shellmaker, Inc., of the terms of the Deed of Trust, and it therefore does not appear likely that the failure of the beneficiary to execute the Agreement will have an effect upon the Agreement; (4) Shellmaker, Inc., with the substantial possessory interest, is prepared to enter into the Agreement, and it does not appear prudent or proper or in the parties' interest to refuse any Agreement with the willing party and thereby forcing the matter into litigation because the owners of the contingent interest are not a party; (5) The Agreement provides that it is made as a compromise and does not constitute an admission, and therefore the Agreement should not prejudice the State should there be future litigation with persons not a party to the Agreement. Pursuant

CALENDAR ITEM 9. (CONTD.)

to Section 6307 of the Public Resources Code, the Governor's approval of the Agreement will be necessary. The Agreement has been approved by the Attorney General's office.

EXHIBITS: A. Geographic location. B. Survey plat. C. Copy of Agreement.

IT IS RECOMMENDED THAT THE COMMISSION ADOPT THE FOLLOWING RESOLUTION:

IT IS HEREBY RESOLVED THAT, PURSUANT TO THE PROVISIONS OF SECTION 6357 OF THE PUBLIC RESOURCES CODE, ESTABLISHMENT BY AGREEMENT OF THE ORDINARY HIGH WATER MARK ALONG A PORTION OF THE LEFT BANK OF THE PETALUMA RIVER, SONOMA COUNTY, CALIFORNIA, IS EXPEDIENT AND NECESSARY AND IN THE BEST INTERESTS OF THE STATE; AND THAT CERTAIN AGREEMENT BY AND BETWEEN THE STATE OF CALIFORNIA, ACTING BY AND THROUGH THE STATE LANDS COMMISSION, AND SHELLMAKER, INC., A CALIFORNIA CORPORATION, PERMANENTLY FIXING AND ESTABLISHING THE LAST NATURAL ORDINARY HIGH WATER MARK AT THE LOCATION AS HEREINAFTER DESCRIBED, IN COMPROMISE AND SETTLEMENT OF THE PARTIES DISPUTE AS TO THE LOCATION OF SAID ORDINARY HIGH WATER MARK, IS HEREBY APPROVED AND ACCEPTED; AND THE EXECUTIVE OFFICER OF THIS COMMISSION IS HEREBY AUTHORIZED AND DIRECTED, BY AND ON BEHALF OF THIS COMMISSION AND THE STATE OF CALIFORNIA, TO EXECUTE SUCH AGREEMENT, ANY SURVEY OF SUCH AGREED ORDINARY HIGH WATER MARK, ANY ESCROW INSTRUCTIONS, AND ALL OTHER DOCUMENTS AS MAY BE NECESSARY OR CONVENIENT TO CARRY OUT THE PURPOSES OF SUCH AGREEMENT, TO SUBMIT THE AGREEMENT TO THE GOVERNOR FOR APPROVAL AND TO DETERMINE AND AUTHORIZE TITLE EXCEPTIONS TO WHICH THE STATE MAY TAKE SUBJECT. THE DESCRIPTION OF SUCH AGREED ORDINARY HIGH WATER MARK IS AS FOLLOWS: COMMENCING AT THE MOST EASTERLY CORNER OF THAT PARCEL OF LAND DESCRIBED IN BOOK 1997, OFFICIAL RECORDS, PAGE 719, SONOMA COUNTY RECORDS; THENCE S 80° 11' 21" E 1413.08 FEET TO A 3½" BRONZE DISC STAMPED "STA 35, 1970, R.C.E. 7663"; THENCE N 82° 52' 31" W 324.87 FEET TO A 1" DIAMETER STATE LANDS COMMISSION TAG STAMPED "R.C.E. 7663"; THENCE CONTINUING N 82° 52' 31" W 97.54 FEET TO THE NORTHWESTERLY RIGHT-OF-WAY LINE OF THE NORTHWESTERN PACIFIC RAILROAD AND THE TRUE POINT OF BEGINNING; THENCE CONTINUING N 82° 52' 31" W 910.09 FEET TO A 3½" BRONZE DISC STAMPED "A-3, 1970, R.C.E. 7663"; THENCE CONTINUING N 82° 52' 31" W 134.11 FEET TO THE SOUTHEASTERLY LINE OF THE PARCEL OF LAND RECORDED IN BOOK 1997, OFFICIAL RECORDS, PAGE 719 AND THE END OF THE HEREIN DESCRIBED LINE FROM WHICH THE SAID POINT OF COMMENCEMENT BEARS N 46° 52' 37" E 86.14 FEET.