MINUTE ITEM 10/7/71

27. STATUS OF MAJOR LITIGATION.

The attached Calendar Item 24 was submitted for information only, no Commission action thereon being necessary.

Attachment:
Calendar Item 24 (5 pages)

INFORMATIVE CALENDAR ITEM 9/71

24.

STATUS OF MAJOR LITIGATION

The following information is current as of September 13, 1971.

1. Case No. 892295 W 503.510
Miller vs. City of Santa Monica, et al.
Los Angeles County Superior Court

(An action by private upland owners involving title to tidelands that have artificially accreted. Both the State Lands Commission and the Division of Beaches and Parks have interests to protect.)

Plaintiffs voluntarily dismissed the case.

2. Case No. 5 Original in the United States Supreme Court W 4721
United States vs. State of California

(Relating to the location of the offshore boundaries between lands under the paramount jurisdiction of the United States and lands owned by the State, for such purposes as minerals. A Supplemental Decree was entered in this case, settling the principal controversies between the State and the United States, but reserving jurisdiction in the United States Supreme Court to settle any remaining controversies.)

The Department of the Interior has sent a copy of revised regulations relating to the Channel Islands National Monument, including the lands within one mile of Anacapa Island which are in dispute between the State and the United States. The regulations have been revised so as to exclude any reference to salvage operations and, with this change, the Attorney General's Office does not consider that these regulations impinge upon any rights claimed by the State of California.

The State Department of Fish and Game has indicated that it opposes the proposed rules and regulations promulgated by the United States in connection with the Channel Islands National Monument. Upon further contact with the attorney representing the United States in this matter, it has been ascertained that the United States is purporting to exercise the powers pursuant to that portion of the Submerged Lands Act of 1953 which reserves to the United States certain lands occupied by the United States as of 1953. The Attorney General of the United States and the Solicitor General are willing to enter into an agreement that these rules and regulations will not prejudice the rights of the State under the Submerged Lands Act to the one-mile strips around Anacapa and Santa Barbara Islands; however, since it now appears that the United States is not purporting to exercise powers under the Commerce Clause of the Constitution, but rather under the aforesaid provision of the Submerged Lands Act, a high level decision will be necessary in the near future to determine whether the rights of the State should be resolved by invoking the retained jurisdiction of the United States Supreme Court in the case of United States vs. California.

3. Case No. 57239 W 503.527
White vs. State of California W 503.562
Sonoma County Superior Court

(Quiet title action against the State to determine a property boundary along the Petaluma River, Sonoma County.)

Upon Rehearing, the Court, on July 15, 1971, rendered Judgment for the Plaintiff -- a two-to-one decision against the State. The State filed its Petition for Rehearing in the District Court on July 30, 1971. Petition for Rehearing was granted.

4. Ad Valorem Tax Litigation W 503.546

(Various actions by oil companies to recover ad valorem taxes. The potential fiscal impact upon the State of this litigation is substantially in excess of $100 million.)

On July 8, 1971, the Attorney General filed Complaints in Intervention in 22 pending ad valorem tax cases on behalf of the State Lands Commission. It is estimated that this litigation may affect State revenues by as much as $180 million, and it is anticipated that the litigation will move expeditiously. On July 15, 1971, the Defendants, City of Long Beach and County of Los Angeles, filed a Motion for Summary Judgment on the ground, among others, that Plaintiff, Long Beach Oil Development Company, had failed to comply with the City's ordinances relating to the filing of claims for refund of taxes. On August 9, 1971, the Attorney General, on behalf of the State Lands Commission, filed a Memorandum of Points and Authorities in Opposition to the Motion for Summary Judgment, taking the position (1) that the Statewide provisions of the Revenue and Taxation Code, rather than the Long Beach ordinances, are the properly applicable claims provisions; and (2) that, in any event, the City is, by waiver, estoppel, or express or implied agreement, precluded from raising this issue in the litigation. It is anticipated that a Closing Brief will be filed by Defendants on or about August 16, 1971. It is now anticipated that a Closing Brief will be filed by the City and the County at a later date than previously anticipated.

5. Case No. M-1105 (formerly Case No. 4 Civil 9344) in the State Superior Court W 4926
County of Orange, et al. vs. Heim, State of California - Real Party in Interest

(Petition for Writ of Mandate involving the legality of the Upper Newport Bay Exchange approved by the State Lands Commission.)

No change; i.e., On April 21, 1971, The Irvine Company filed a Complaint for Declaratory Relief against the County of Ora in the Orange County Superior Court. The purpose of this proc ... is to test the legal validity of a Notice of Termination on the Exchange and Dredging Agreements, which was served upon The Irvine Company on January 22, 1971. The County filed its Answer to this Complaint on July 12, 1971. Although the State has not been named a party to these proceedings, the Attorney General is keeping abreast thereof, and will keep the Commission informed.

W 503.456

6. Case No. 203455
Dillon vs. Atchison, Topeka and Santa Fe Railway Company
San Diego County Superior Court

(To determine whether or not Tideland Survey No. 17 is valid, based upon Patent from the Governor of about 1871.)

No change; i.e., The State and the San Diego Unified Port District have received Appellant's Opening Brief, and are preparing Respondents' Brief.

W 1839.24

7. Case No. 32824
People vs. William Kent Estate Company
Marin County Superior Court

(Retrial of an action to abate a public nuisance (a fence erected and maintained perpendicular to the shoreline) on the Pacific Ocean side of the Bolinas Lagoon Sandspit. The case involved a judicial interpretation of the Statutory phrase "Ordinary High Water Mark".)

No change; i.e., Plaintiff filed Notice of Appeal and requested preparation of Clerk's and Reporter's Transcripts on Appeal.

W 6987
W 1839.28

8. Civil Case No. 144257
State of California vs. County of San Mateo, et al.
San Mateo County Superior Court

(A declaratory relief action to determine what interests were conveyed in trust to the County of San Mateo by Chapter 1857, Statutes of 1965.)

No change; i.e., The Superior Court granted the Motion of the Sierra Club and the Save San Francisco Bay Association to intervene as party, subject to their limiting the issues to those raised in the State's original Complaint. Further developments await completion of factual study.

W 503.539

9. Civil Case No. 125379 (companion case to No. 144257 above)
County of San Mateo vs. Ideal Cement Company, et al.
San Mateo County Superior Court

(In order to obtain uniformity of decision, the State has filed an Answer to the Complaint. This action is a condemnation matter brought by the County of San Mateo, concerning lands located within the aforementioned statutes (Ch. 1857/65). The State contends that said lands were granted in trust to the County, or in the alternative, that the County received an easement over said lands in trust which permits the County to use the subject property for the purposes contemplated by the condemnation action.)

No change; i.e., Stipulation has been signed by all parties, continuing any further proceedings in the case until there is a resolution of the issues presented in State of California vs. County of San Mateo, et al., Case No. 144257 (see No. 8 above).

10. Case No. SOC 21023 W 503.609
City of Long Beach vs. Radford, et al.
Los Angeles County Superior Court
and
Case No. 171042 W 503.610
City of Long Beach vs. Matthews, et al.
Orange County Superior Court (transferred from Los Angeles County Superior Court)

(These are two condemnation actions filed by the City of Long Beach to obtain title to parcels of property lying between Ocean Boulevard in Long Beach and the public beach, as a part of the City's overall acquisition program to obtain substantially all waterfront property in public ownership. The State of California has been named as a defendant because the seward boundary of the affected parcels may be the landward boundary of sovereign lands granted by the State to the City of Long Beach in trust.)

In the Radford case: Matter is currently being tried. Testimony on the seaward boundary and existence of a Gion easement was concluded on September 2, 1971. The matter has been submitted to the Court for a decision on these two issues. Trial on value of the parcel being condemned by the City will resume on November 1, 1971.

In the Matthews case: Trial has been continued to February 28, 1972.

11. Case No. 838005 W 503.641
Union Pacific Railroad Company, et al. vs. City of Long Beach
Los Angeles County Superior Court

(Suit attacking the City of Long Beach business license tax for oil production. That portion of the ordinance providing for revenues from unitized tideland operations was declared unconstitutional.)

Amicus Curiae Brief on behalf of the State Lands Commission was filed on February 17, 1971. Closing briefs due September 20, 1971.

12. First Appellate District, Case No. 24883 W 503.534
California Supreme Court, Case No. SF-22566
Marks vs. Whitney

(A quiet title action between two private land owners, primarily concerning the ownership of a tideland patent on Tomales Bay. The seaward boundary of said tideland patent is the landward boundary of State submerged lands.)

No change; i.e., Awaiting decision of the California Supreme Court.

W 503.669

13. Case No. 178401
County of Orange vs. Chandler Sherman, et al.
Orange County Superior Court

(The County brought the action, on an implied dedication theory, to quiet title to certain beach property near Dana Point.)

No change; i.e., Chandler Sherman filed an Answer and Cross Complaint on July 1, 1971.

W 503.621

14. Case No. M-1164
Sagar vs. County of Orange, et al.
Orange County Superior Court

(Private parties brought an action against the County for vacating a road which provided the only access to the Salt Creek Beach.)

No change; i.e., Negotiations between Orange County and Avco Community Developers are nearly completed to settle this case. A bill, A.B. 1668, which would confirm the agreement, is now before the Legislature, and has passed the Assembly.

W 1839.29

15. Case No. 15156
People vs. Vincilione, et al. (People vs. Evans, et al.)
Riverside County Superior Court

(A case to quiet title and for injunctive relief concerning the Colorado River.)

A Preliminary Injunction has been issued to stop Defendants from any further fill of the river. Answer and Counter Claim were filed by Defendant, and Demurrer to the same has been argued and is under submission.

W 1839.21

16. Case No. 3 Civil 12936
People vs. Ray Mack, et al.
Court of Appeals, Third Appellate District

(An action brought by the District Attorney of Shasta County, which involves the navigability of the Fall River.)

No change; i.e., Argued before the Court of Appeals on July 20, 1971. Awaiting a decision.

W 503.586

17. Case No. 940856
Federated Mortgage Investors, et al., vs. Charles Lick, et al.
Los Angeles County Superior Court

(An action between private parties to determine ownership of the Lick Pier (Pacific Ocean Park), and to determine the ordinary high water mark at that point.)

Parks and Recreation may be interested in acquiring the uplands, which would resolve the problem as to ownership. There have been further discussions between State Lands, Parks and Recreation, City of Los Angeles and County of Los Angeles.