

21. STATUS OF MAJOR LITIGATION.

The attached Calendar Item 20 was submitted to the Commission for information only, no action thereon being necessary.

Attachment:

Calendar Item 20 (5 pages)

STATUS OF MAJOR LITIGATION

The following information is current as of November 4, 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.

Second notices were mailed on October 28, 1971, to the 34 property owners believed to be responsible for the encroachments involved in this action, informing the owners that action would be taken by the State of California and the City of Santa Monica if they failed to voluntarily remove the encroachments within sixty days.

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.)

A proposed Stipulation was received from the U. S. Attorney's Office to the effect that the proposed 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, are without prejudice to any claims of the State of California under the Submerged Lands Act, and that this matter may be litigated at a later date. Since the Department of Fish and Game had evidenced opposition to the proposed rules and regulations, a copy of said agreement was sent to that Department for its concurrence. The Department of Fish and Game has now indicated that it has no objection to the proposed stipulation. Therefore, the Stipulation will be signed and copies retained by the U. S. and California Attorneys General.

INFORMATIVE CALENDAR ITEM 20. (CONTD.)

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.)

No change; i.e., 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. Still under submission.

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.)

No change; i.e., 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 had been anticipated that a Closing Brief would 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 W 4926  
State Superior Court  
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.)

Completion of the Record on Appeal is anticipated within the next few weeks, and corrections are now being made in the Reporter's Transcript. It is anticipated that briefing will commence within the next sixty days.

INFORMATIVE CALENDAR ITEM 20. (CONTD.)

6. Case No. 283455 W 503.456  
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.

7. Case No. 32824 W 1839.24  
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.

8. Civil Case No. 144257 W 6987  
State of California vs. County of San Mateo, et al. W 1839.28  
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.

9. Civil Case No. 125379 (companion case to No. 144257 above) W 503.539  
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).

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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 seaward 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: No change; i.e., 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: No change; i.e., Trial has been continued to February 28, 1972.

11. Case No. 36989, 2nd Civ. W 503.641  
Union Pacific Railroad Company, et al. vs. City of Long Beach  
Court of Appeals

(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.)

Oral argument has been reset for December 21, 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.

INFORMATIVE CALENDAR ITEM 20. (CONTD.)

13. Case No. 178401 W 503.669  
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.

14. Case No. M-1164 W 503.621  
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.)

A. B. 1668, confirming the agreement to settle this case, has been signed by the Governor. State Lands Commission to submit a report, pursuant to the bill.

15. Case No. 15156 W 1839.29  
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.)

The State has filed a Motion for Judgment on the Counter Claim.

16. Case No. 3 Civil 12936 W 1839.21  
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.)

An Opinion was issued by the Court of Appeals, upholding the lower court in the State's favor. There possibly will be a Petition for Rehearing in the Supreme Court.

17. Case No. 940856 W 503.586  
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.)

No change; i.e., 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.