

22. STATUS OF MAJOR LITIGATION.

The attached Calendar Item 22 was submitted to the Commission for information only, no action thereon being necessary.

Attachment:

Calendar Item 22 (4 pages)

INFORMATIVE CALENDAR ITEM

10/73

22.

STATUS OF MAJOR LITIGATION

As of September 30, 1973, there were 238 litigation projects involving the Commission, down one from last month.

1. Federated Mortgage Investors, et al. v. Charles Lick, et al. W 503.586
Los Angeles Superior Court Case No. 940856
USDC-CDC No. 99379 EAC

(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.)

On May 26, 1972, the State was sued in Declaratory Relief by Matador Land Co. to determine the location of the Mean High Tide Line (L.A. Superior Court Case No. 30527) (W 503.711). Matador failed to pay taxes and the property was sold to the State. Matador declared bankruptcy to preserve its right of redemption. Negotiations between General Services and Matador whereby General Services would purchase the land for a State park have broken down. Los Angeles County is now considering purchase of the land.

2. U.S. v. 1164.34 Acres W 503.696
U.S. District Court Case No. 2274

(U.S. condemnation action for wildlife refuge of all the mud flats between the Sears Point Highway and San Pablo Bay boundary by Mare Island Navy Yard on the east and Sonoma Creek on the west.)

Tract 12 in the condemnation take is the subject of a stipulation for judgment approved by the Commission at its January 1973 meeting. Said judgment will establish the 1923 U.S. Government Land Office meander line as the permanent and fixed boundary line between the privately owned uplands and the sovereign lands of the State. The case is still under negotiation.

INFORMATIVE CALENDAR ITEM NO. 22. (CONTD)

3. Pembroke v. State
Orange Superior Court Case No. 189853

W 503.699

(Declaratory relief action by plaintiff to declare its rights vis-a-vis the State's interest.)

Factually, the case concerns the last natural position of the Santa Ana River, and the extent to which the bed of the river crosses the private property of the various parties. Trial is scheduled for November 20, 1973. A pretrial conference was held on September 8, 1973, which resulted in an unsuccessful attempt to resolve the dispute. A negotiated settlement is still possible in this case, and the Office of the Attorney General is pursuing the matter.

4. City of Albany v. State
Alameda Superior Court Case No. 428396

W 503.726

(Plaintiff seeks declaratory relief with regard to the State Lands Commission finding that the 1961 tideland grant to the City of Albany had not been substantially improved.)

On September 28, 1973, the Court of Appeal, Division One, issued an alternative writ in the Albany case. The Court directed the Superior Court of Alameda County to vacate its order of May 9, 1973, to deny intervener's motion for summary judgment and to hear the matter on the merits. The opposition has until October 29, 1973, to file a response to the writ.

5. Pariani v. State of California
San Francisco Superior Court Case No. 657291

W 503.737

(Plaintiff seeks to quiet title to three parcels of land in Sonoma and Lake Counties. State patented said land into private ownership in 1953, reserving all mineral rights. Plaintiff now seeks to determine whether geothermal energy was reserved to the State under the 1953 patent.)

On July 6, 1973, the Attorney General's office responded in this case on behalf of the State by filing an answer and cross-complaint. Extensions of time have been granted to plaintiff to allow him to respond to cross-complaints filed by State.

INFORMATIVE CALENDAR ITEM NO. 22. (CONTD)

6. Bonelli Cattle Co. v. State of Arizona
U. S. Supreme Court Case No. 72-397

W 503.739

(Action to quiet title to certain lands lying within the
form bed of the Colorado River.)

State of California has entered the case as amicus curiae and filed a brief in support of positions taken by the State of Arizona. Questions presented were the definition of the high water mark, the ownership of land exposed by channelization, whether federal or state law controls in the case, and whether the Arizona Supreme Court must support the Submerged Lands Act.

The case is scheduled for oral argument before the U. S. Supreme Court on October 15, 1973.

7. Zongker v. Mott
San Diego Superior Court Case No. 3186N

W 503.745

(Quiet title action instituted by plaintiff regarding a
parcel of land in San Diego County adjacent to South
Carlsbad State Beach.)

Although the Commission was served in the case, the direct State agencies affected by the litigation are the Department of Parks and Recreation and the Division of Highways. The plaintiffs have recently filed an At Issue Memorandum with the court.

8. People v. William Kent Estate Company
Marin Superior Court Case No. 32824

W 1839.24

(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.")

Transcripts on appeal have been completed with Appellant's (State's) and Respondent's (William Kent Estate Co.) briefs having been filed. On June 18, 1973, Respondent filed a Motion for Order to Dismiss the Appeal. The State filed its Opposition to Motion for Order to Dismiss Appeal on July 5, 1973. On July 17, 1973, Respondent filed its reply Memorandum to appellant's Memorandum of Points and Authorities in Opposition to Motion for Order to Dismiss Appeal. The California Land Title Association on July 27, 1973, filed its amicus curiae Memorandum of Points and Authorities in support of Motion to Dismiss Appeal. Thereafter, amici curiae, the Sierra Club, the Environmental Defense Club, the law firm of Nossaman, Waters, Scott, Krueger & Riordan, and the Chairman of the California Coastal Zone Conservation Commission wrote letters to the court in opposition to Respondent's Motion to Dismiss. On August 13, 1973, State filed closing Memorandum of Points and Authorities in Opposition to Motion for Order to Dismiss Appeal. The court of appeals has set a hearing date of November 14, 1973.

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INFORMATIVE CALENDAR ITEM NO. 22. (CONTD)

9. State of California v. County of San Mateo, et al.
San Mateo Superior Court Case No. 144257

W 1839.28
W 6987

Suit seeking Declaratory Judgment to protect the public property rights in land covered by the open waters of South San Francisco Bay westerly of the deep draught ship channel, the area of which has been substantially increased with the filing of a cross-complaint by Westbay Community Associates to be an approximate 10,000 acres and twenty-one miles of shoreline including most of the westerly portion of the Bay between the San Francisco International Airport and the southerly San Mateo County line. Titles to other adjacent substantial areas of salt ponds have been brought into the case with the filing of a Complaint in Intervention by Leslie Salt Co. Pretrial and Discovery proceedings are now in progress, with factual investigation relating to substantial and complex issues continuing.

10. State of California v. Dart Industries, Inc., et al.
Nevada County Superior Court Case No. 18595

W 503.743

(Ejectment action to compel removal of purprestures from Donner Lake.)

On July 2, 1973, State filed complaint in ejectment for damages, and to compel the removal and prevent the maintenance of purprestures which obstruct navigation and interfere with the exercise of the public trust over navigable waters of Donner Lake. The purprestures are in the form of a landfill, a concrete boat launching ramp, and a water intake pipeline which encroach waterward into the lake.

Defendants in this action have been served with summons and complaint and have been granted an indefinite extension of time in which to answer, contingent upon their application for and attainment of the appropriate leases and permits. The joint draft EIR between Tahoe Donner Public Utility District and Dart is currently being prepared. The lease applications have only recently been received.