

24. AUTHORIZATION TO ACCEPT THE FINAL SETTLEMENT OFFER IN THE BANKRUPTCY PROCEEDINGS OF A. G. SCHOONMAKER COMPANY, INC., IN THE U. S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, CASE NO. 1-71-17; SAN FRANCISCO, SOLANO, AND CONTRA COSTA COUNTIES - W 6545.

After consideration of Calendar Item 24 attached, and upon motion duly made and carried, the following resolution was adopted:

THE STATE LANDS COMMISSION:

1. AUTHORIZES THE ACCEPTANCE OF THE FINAL SETTLEMENT OFFER OF A. G. SCHOONMAKER COMPANY, INC., OF \$15,500 AS SETTLEMENT IN FULL OF THE STATE LANDS COMMISSION'S CLAIM IN THE BANKRUPTCY PROCEEDINGS OF A. G. SCHOONMAKER COMPANY, INC., IN THE U. S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, CASE NO. 1-71-17, AND
2. AUTHORIZES THE EXECUTIVE OFFICER AND THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL ACTIONS NECESSARY TO EFFECT SUCH A SETTLEMENT.

Attachment:

Calendar Item 24 (2 pages)

AUTHORIZATION TO ACCEPT THE FINAL SETTLEMENT OFFER
IN THE BANKRUPTCY PROCEEDINGS OF A. G. SCHOONMAKER COMPANY, INC.,
IN THE U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT
OF CALIFORNIA, CASE NO. 1-71-17,
SAN FRANCISCO, SOLANO, AND CONTRA COSTA COUNTIES

In 1964, A. G. Schoonmaker Company, Inc., was the successful high bidder on three mineral extraction leases with the State Lands Commission. The three leases provided for an annual rental, plus a minimum royalty for the extraction of sand. They were each five years in duration and covered submerged land in Suisun and San Francisco Bay, as shown in Exhibits A-1 and A-2.

The company contends that it was excused from payment of the minimum royalty provided for in the leases under the doctrine of "commercial frustration" by virtue of the enactment of BCDC legislation, subsequent to the execution of the leases. The company claims that it had contemplated using the sand from its leases for bay-fill projects and that BCDC regulation had radically reduced the number of such projects. The company has paid royalty on all sand extracted.

The Schoonmaker Company was advised in 1967 that the minimum royalty provisions would not be waived, but if the company so desired, they could quitclaim the lease to the State and be relieved of future liability under the lease. The company chose not to quitclaim the lease back to the State.

On January 8, 1971, the A. G. Schoonmaker Company filed proceeding under Chapter XI of the Federal Bankruptcy Act. On March 22, 1971, the State Lands Commission filed a claim in bankruptcy for \$20,875.45; \$18,590.59 of this amount being for delinquent rentals and minimum royalties under the leases, and the remaining \$2,284.86 for a penalty for failure to make timely payment as provided for under Section 6224 of the Public Resources Code.

After lengthy negotiations with the Schoonmaker Company, the company has made a "final settlement offer" of \$15,500.

The Office of the Attorney General has recommended that the State Lands Commission accept this sum as payment in full on the following grounds:

1. It can be argued that the claim for a "penalty" over and above the claimed rents and royalties is prohibited under Section 57J of the Bankruptcy Act. In the event the \$2,284.86 the State Lands Commission claimed as penalty in its claim is disallowed, this would bring the Commission's claim to \$18,590.59.
2. Although acceptance of the Schoonmaker Company's arguments by the bankruptcy court is improbable, there is a sufficient possibility of the

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State Lands Commission being denied recovery to warrant settlement of the Commission's claim for somewhat less than the full amount.

EXHIBITS: A-1. Location Map. A-2. Location Map.

IT IS RECOMMENDED THAT THE STATE LANDS COMMISSION:

1. AUTHORIZE THE ACCEPTANCE OF THE FINAL SETTLEMENT OFFER OF A. G. SCHOONMAKER COMPANY, INC., OF \$15,500 AS SETTLEMENT IN FULL OF THE STATE LANDS COMMISSION'S CLAIM IN THE BANKRUPTCY PROCEEDINGS OF A. G. SCHOONMAKER COMPANY, INC., IN THE U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, CASE NO. 1-71-17, AND
2. AUTHORIZE THE EXECUTIVE OFFICER AND THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL ACTIONS NECESSARY TO EFFECT SUCH A SETTLEMENT.