

21. STATUS OF MAJOR LITIGATION.

The attached Calendar Item 19 was submitted to the Commission for information only, no action thereon being necessary.

Attachment:

Calendar Item 19 (5 pages)

19.

STATUS OF MAJOR LITIGATION

As of October 31, 1973, there were 239 litigation projects involving the Commission, up one from last month.

1. U.S. v. 1164.34 Acres
U.S. District Court Case No. 2274

W 503.696

(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.

2. 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.

II. INFORMATIVE CALENDAR ITEM NO. 19. (CONTD)

W 503.726

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

(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 had until October 29, 1973, to file a response to the writ.

W 503.737

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

(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.

W 503.739

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

(Action to quiet title to certain lands lying within the former 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 was argued before the U.S. Supreme Court on October 15, 1973.

INFORMATIVE CALENDAR ITEM NO. 19. (CONTD)

6. 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.

7. Union Oil of California v. Houston I. Flournoy, et al.
U.S. District Court, Central District
Civil No. 732486

W 503.747

(An action by Union Oil Company to prevent State from selling royalty oil.)

Under State Oil and Gas Lease PRC 3033.1 entered into with Union Oil Company, the Commission had the right to receive royalty payments in kind. At its July 1973 meeting, the Commission announced its intention to receive bids for this royalty oil and for royalty oil for other Orange and Los Angeles County leases. Bids were subsequently received for this royalty oil. The contract for the purchase of this oil was to be awarded at the October 25, 1973, Commission meeting, but this award was prevented by Union's filing and obtaining on October 24, 1973, an order to show cause and temporary restraining order. Union alleged that the sale was in violation of the Federal Government "Phase IV" price controls and was hence illegal. On November 5, 1973, the preliminary injunction obtained by Union was denied and the temporary restraining order was dissolved.

Further action in this case will await action by the Cost of Living Council.

INFORMATIVE CALENDAR ITEM NO. 19. (CONTD)

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.")

All transcripts on appeal had been completed with Respondent (William Kent Estate Co.) filing a Motion for Order to Dismiss the Appeal on June 18, 1973. The Court of Appeals set a hearing date of November 14, 1973, but on October 10, 1973, the court dismissed the case as moot. Appellant's (State's) Petition for Rehearing, filed on October 25, 1973, was denied on November 9, 1973. State will file a petition for hearing in the State Supreme Court.

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.

INFORMATIVE CALENDAR ITEM NO. 19. (CONTD)

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.