

23. STATUS OF MAJOR LITIGATION.

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

Attachment:

Calendar Item 24 (5 pages)

INFORMATIVE CALENDAR ITEM

1/74

24.

STATUS OF MAJOR LITIGATION

As of December 31, 1973, there were 251 litigation projects involving the Commission, up six from last month.

1. 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.

2. Pembroke v. State W 503.699
Orange Superior Court Case No. 189853

(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. The Office of the Attorney General has reached a tentative negotiated settlement of the matter based upon the 1913 survey of the Santa Ana River. The paper work necessary for final approval and filing is now being processed.

INFORMATIVE CALENDAR ITEM NO. 24. (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.)

The Court of Appeals modified its injunction to prohibit any further fill within the waters of San Francisco Bay. The new order, however, allows the additional piling of material on the existing fill.

On January 21, 1974, the Court of Appeals ruled on the merits of the case before it. The court ruled that the formation of the State Lands Commission at the meeting terminating the Albany grant was proper. The case is remanded to the Superior Court for trial on the issue of substantial improvement. The date of trial is not yet determined.

4. 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.)

The Attorney General's Office filed a cross-complaint in July 1973, and in October 1973 a demurrer was filed to certain answers filed by one group of plaintiffs. On December 4, 1973, the Court upheld the State demurrer, thereby eliminating three of the plaintiff's defenses in the case.

5. 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 former bed of the Colorado River.)

On December 17, 1973, the United States Supreme Court handed down its opinion in the Bonelli case. The opinion written by Justice Marshall states that federal law applies when determining ownership of the land exposed by the rechanneling of the Colorado River. In so holding, the court eliminates the State law that makes a distinction between artificial and natural accretions. The case says that an artificial accretion will change the boundaries of the property owners. The ruling grants the exposed land to the riparian owner, Bonelli, rather than the prior owner, the State of Arizona.

INFORMATIVE CALENDAR ITEM NO. 24. (CONTD)

W 503.747

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

(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.

On November 29, 1973, the Commission awarded the contract to purchase the oil. That same day, Plaintiff applied for another temporary restraining order to prevent the sale, which order was denied. Plaintiff's second application for preliminary injunction was heard and denied on December 17, 1973.

New Federal regulations clearly exempt the State from the Cost of Living Council regulations.

The State filed an answer to plaintiff's complaint on December 21, 1973.

INFORMATIVE CALENDAR ITEM NO. 24. (CONTD)

7. 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 have 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 filed a Petition for Hearing on November 19, 1973, with the State Supreme Court. On December 19, 1973, the State Supreme Court denied hearing of the case.

8. 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. 24. (CONTD)

9. 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, the 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 been received.

10. Shirley Ingham, et al., v. State Lands Commission, et al.
San Luis Obispo Superior Court Case No. 42021

W 503.753

On December 5, 1973, the Commission was served in this action in connection with land under its jurisdiction at Pismo Beach. The crux of the complaint was that certain State, county and local officials were failing to maintain adequate health and safety facilities at Pismo Beach.

On behalf of the Commission, the Office of the Attorney General filed a demurrer which was sustained without leave to amend on January 21, 1974.