

27. BOUNDARY SETTLEMENT AND LAND EXCHANGE AGREEMENT BETWEEN THE COMMISSION, AND THOSE OTHER PARTIES EXECUTING SAID AGREEMENT; NAPA AND SOLANO COUNTIES - W 8848.

During consideration of Calendar Item 26 attached, Mr. Trev Wright of the Department of Fish and Game advised the Commission that the Department of Fish and Game hoped the Commission would move forward on the resolution because it will be of great benefit to fish and wildlife in the area involved.

Upon motion duly made and carried, the following resolution was adopted:

THE COMMISSION:

1. FINDS THAT THE EXCHANGE OF LANDS AND RIGHTS, SET FORTH IN THE AGREEMENT REFERRED TO IN PARAGRAPH 2 BELOW, ARE IN THE BEST INTERESTS OF THE STATE FOR THE IMPROVEMENT OF NAVIGATION AND TO ENHANCE THE CONFIGURATION OF THE SHORELINE OF PORTIONS OF SOUTH AND DUTCHMAN SLOUGHS FOR THE IMPROVEMENT OF THE WATERS THEREOF AND THE ADJACENT UPLANDS, AND THAT IT WILL NOT SUBSTANTIALLY INTERFERE WITH THE RIGHTS OF NAVIGATION AND FISHING IN THE WATERS INVOLVED AND, IN FACT, WILL ENHANCE AND ENLARGE PUBLIC RIGHTS AND UTILIZATION OF SAID WATERWAYS FOR TRUST PURPOSES OF COMMERCE, NAVIGATION, AND FISHERIES; AND THAT THE STATE WILL RECEIVE LANDS AND INTERESTS IN LANDS EQUAL TO OR GREATER IN VALUE THAN ANY SUCH LANDS OR INTERESTS RELINQUISHED BY THE STATE PURSUANT TO SAID AGREEMENT.
2. AUTHORIZES THE EXECUTION OF THE BOUNDARY SETTLEMENT AND LAND EXCHANGE AGREEMENT (BLA 142) BETWEEN THE COMMISSION, AND THOSE OTHER PARTIES EXECUTING SAID AGREEMENT, SAID AGREEMENT BEING ON FILE IN THE OFFICE OF THE STATE LANDS COMMISSION AND BY REFERENCE MADE A PART HEREOF.
3. AUTHORIZES THE EXECUTION OF A STATE PATENT WITHOUT THE RESERVATION OF MINERAL INTERESTS TO THE CULLINANS, AND OTHER PRIVATE PARTIES, AS THEIR INTEREST MAY APPEAR OF RECORD IN THE OFFICE OF THE COUNTY RECORDERS OF NAPA AND SOLANO COUNTIES TO THE PARCELS OF REAL PROPERTY DESCRIBED IN SAID AGREEMENT REFERRED TO IN PARAGRAPH 2 ABOVE, PURSUANT TO THE TERMS OF SAID AGREEMENT.
4. AUTHORIZES THE ACCEPTANCE AND RECORDATION OF CONVEYANCES TO THE STATE WITHOUT RESERVATION OF MINERAL INTERESTS AS PROVIDED IN SAID BOUNDARY SETTLEMENT AND LAND EXCHANGE AGREEMENT.
5. FINDS AND DECLARES THAT UPON THE DELIVERY OF THE PATENT TO THE PARTIES REFERRED TO IN PARAGRAPH 3 ABOVE, AND THE RECORDATION THEREOF IN THE OFFICE OF THE COUNTY RECORDERS OF NAPA AND SOLANO COUNTIES, THE REAL PROPERTY DESCRIBED IN SAID PATENT:
 - A. HAS BEEN CUT OFF FROM NAVIGABLE WATERS, IMPROVED, FILLED, AND RECLAIMED BY CULLINAN, AND THEIR PREDECESSORS IN INTEREST;

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- B. HAS THEREBY BEEN SEVERED FROM THE PUBLIC CHANNELS AND WATERWAYS AND IS NO LONGER AVAILABLE FOR USEFUL OR SUSCEPTIBLE OF BEING USED FOR COMMERCE, NAVIGATION, AND FISHING, AND IS NO LONGER IN FACT TIDELANDS OR SUBMERGED LANDS AND THEREFORE IS FREED FROM THE PUBLIC TRUST FOR SUCH USES.
6. AUTHORIZES THE STATE LANDS DIVISION AND THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL FURTHER STEPS NECESSARY TO IMPLEMENT THE ABOVE TRANSACTION, INCLUDING, BUT NOT LIMITED TO, APPEARANCES IN ANY LEGAL PROCEEDINGS BROUGHT CONCERNING THE ABOVE TRANSACTION.

Attachment:

Calendar Item 26 (5 pages)

EXECUTION OF THE BOUNDARY SETTLEMENT AND
LAND EXCHANGE AGREEMENT BETWEEN THE COMMISSION,
AND THOSE OTHER PARTIES EXECUTING SAID AGREEMENT
NAPA AND SOLANO COUNTIES

The "Cullinan Ranch" (approximately 1,600 acres) is located in Napa and Solano Counties. The Ranch is bounded southerly by Sears Point Highway (State Route 37) and northerly by Napa Delta Waterways, known as Dutchman and South Sloughs. These ranch lands and waterways were within the perimeter descriptions of Swamp and Overflowed Land Patents issued by the State to private parties many years ago. The sloughs and certain now closed-off inlets within the Ranch are claimed by the State by reason of their tidal and navigable sovereign character. The parties are in serious and bona fide dispute with respect to their respective title claims, the character and location of the boundaries of the sloughs, and of the extent of the public interest, if any, within the Ranch.

The private parties contend that the patents conveyed fee simple absolute title free of any reservations in the State to lands included within the perimeter description of the patents. The State contends that the patents conveyed fee simple absolute title only to the swamp and overflowed lands included within said description, and that the patents did not validly convey the public's right, title and interest in the tidelands and submerged lands included within the said description, the same being held by the State by reason of its sovereignty.

In the interest of avoiding the costs and uncertainties of litigation, the problems are proposed to be resolved by compromise between the parties according to the terms of a written agreement, a copy of which is on file with the Commission.

The agreement is proposed under the provisions of the Public Resources Code, and provides as follows:

1. The agreed boundary (the ordinary high water mark) generally follows the presently existing levees along the sloughs, as shown on Exhibit "B".
2. The State is to receive certain parcels within the Cullinan Ranch in exchange for the State's right, title, and interest within the remainder of the Ranch property. The lands to be received by the State are: Parcel "A" of about 2.5 acres; Parcel "B" of about 85.0 acres; Parcel "C" of about 15.0 acres; and Parcel "D" of about 2.5 acres. Size and location are shown on Exhibit "B".

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3. In addition to access to the sloughs from the State parcels, the State is to receive approximately 3.3 miles of Public Water Access Easement, being a 19 foot wide easement for use of a portion of the top of the levee down to the waterway, for public use and access to and from and along the sloughs as shown on said Exhibit "B", as Public Water Access Easement "A".
4. The State is also to receive approximately 2.9 miles of relocatable public road right-of-way leading to the Water Access Easements and the fee parcels bordering on the waterway. The easements are generally shown on said Exhibit "B" as Public Road Easements "A" and "B".
5. The private parties are entitled to substitute (within the period of two years), for Parcels "B" and "C", certain lands in proximity of the subject area in Napa County known commonly as Coon Island, patented by the State many years ago as Swamp and Overflowed lands, together with any accretions or additions thereto. The substituted lands are of high environmental interest to the State Department of Fish and Game. These lands (Coon Island) are generally shown on Exhibit "C".
6. The private parties retain the right to maintain the levees without any obligation of the State to do so. The State has the option, however, to relocate the present levee system along Parcels "A" and "B" within the area of Parcel "B".
7. In furtherance of the agreement, the State will quitclaim by patent, any right, title, and interest within the Ranch, with the exception of Parcels "A", "B", "C" and "D" Public Road Easements "A" and "B"; Public Water Access Easement "A"; any and all right, title and interest of the State of California, held for State highway purposes under the jurisdiction of the California State Department of Transportation; the public trust easement for the purposes of commerce, navigation, and fisheries over and across any portions of the lands within a 19 foot wide strip lying adjacent and southerly of the agreed boundary line which may be now covered or which may hereafter be covered by the waters of Dutchman and South Sloughs; and the private parties will quitclaim all right, title, and interest which they may have within the present channels of South and Dutchman Sloughs, including "Widow's Island" and a portion of the Napa River and grant Parcels "A", "B", "C" and "D" to the State, together with the Water Access Easement of 3.3 miles and the Public Road Easements.
8. The Public Water Access Easement "A" may be interrupted at the option of the private parties (to be exercised within a 20-year period) for no more than 150 feet per interruption along the sloughs to a cumulative total of 2,000 feet. In no event shall interruption fail to

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provide a continuous path for the public or extend into the slough area. Any such interruption is to be solely at the private parties' expense.

9. The State will receive title insurance, without cost to the State, as follows:
 - a. A title guaranty insuring the State of California in the sum of \$50,000.00, that all necessary parties have joined in the boundary agreement;
 - b. A Standard California Land Title Association policy of title insurance insuring the State's title in Parcels "A", "B", "C", and "D", and the Water Access and Public Road Easements in the sum of \$150,000.00.

The private parties have prepared a survey (to be recorded concurrently with the close of escrow as provided in the agreement) of the lands in question depicting the various parcels and boundaries to be established by this agreement. The survey was determined to be satisfactory after a review and independent analysis completed by the Division staff.

The lands within the Ranch for which the claim of State interest is being exchanged have been reclaimed, have been cut off from navigable or tidal waters for more than thirty years, and have been continuously devoted to agricultural purposes.

The State Department of Fish and Game has expressed its interest in this transaction and it is anticipated that the lands confirmed in the State by this agreement will be administered by the Department of Fish and Game under permit from the Commission.

Pursuant to Section 6357 of the Public Resources Code, the State Lands Commission is authorized to enter into boundary line agreements regarding the location of the ordinary high water mark.

The State Lands Commission also has the general authority, with regard to the lands in question, by virtue of Sections 6102 and 6301 of the Public Resources Code, to enter into such boundary line agreements.

The proposed boundary settlement and exchange agreement is exempt from the provisions of Section 6371 of the Public Resources Code relating to environmental impact reports. Such reports must be filed for uses made by any subsequent lessee prior to the use of any lands which may be leased by the State Lands Commission.

An evaluation has been made by the State which indicates that the State will receive lands and interests in lands equal to or greater in value than those lands and interests claimed by the State and to be surrendered as a result of the exchange.

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This agreement is in the best interests of the State and constitutes the diligent fulfillment by the Commission of its duties as guardian of the public titles in the recognition and in the furtherance of the principles established by law for the protection of the public's right, title, and interest in its tidal-navigable waterways; and the State Lands Division recommends approval by the Commission. The fundamental principles upon which this agreement is based are as follows:

1. Preservation and protection of the public's right, title and interest in any tide or submerged lands which may have been included within State patents of Swamp and Overflowed lands to private parties; and
2. Preservation and protection of public access to and use of tidal-navigable waterways within the State of California.

This matter has been reviewed and approved by the office of the Attorney General.

EXHIBITS: A. Vicinity Map.
 B. Detail Map.
 C. Map of Coon Island.

IT IS RECOMMENDED THAT THE COMMISSION:

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