

26. BOUNDARY AND EXCHANGE AGREEMENT BETWEEN THE STATE AND DART INDUSTRIES, INC., DONNER LAKE, NEVADA COUNTY - W 503.743, BLA 145; PRC 4909.1, PRC 4916.9.

During consideration of Calendar Item 24 attached, Mr. James F. Trout, Manager, Land Operations, presented a summary on the background of the land exchange at Donner Lake. He stated that two separate issues were involved:

1. The issue of the pipeline, which was not being considered; and
2. The land exchange between the State and Dart Industries, Inc. which will remedy the problem of filled State sovereign land, thereby making it no longer useful for the trusts of commerce, navigation and fisheries, which was before the Commission.

Mr. Trout stated that the Division had received 44 pieces of correspondence, 24 of which were concerned directly with the pipeline. Of the remaining letters, 15 were pertinent to the land exchange--6 being in favor and 9 against. In addition, the Division received 2 letters from the Nevada County District Attorney's Office, which had no objections to the land exchange.

Appearance in Favor of the Land Exchange

Mrs. Marjorie Adkerson, Board member of the Donner Lake Property Owners Association

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

THE COMMISSION:

1. DETERMINES THAT NO ENVIRONMENTAL DOCUMENT HAS BEEN PREPARED FOR ANY OF THESE ACTIVITIES AS NONE IS REQUIRED UNDER THE PROVISIONS OF PUBLIC RESOURCES CODE SECTION 6371 AND SECTIONS 21000, ET SEQ.; 14 CAL. ADM. CODE SECTION 15037; AND 10 CAL. ADM. CODE SECTION 2910(d).
2. FINDS AND DECLARES THAT THE STATE LAND TO BE CONVEYED TO DART INDUSTRIES, INC., BY BLA 145 HAS BEEN IMPROVED, FILLED, AND RECLAIMED, AND HAS THEREBY BEEN EXCLUDED FROM THE PUBLIC BED OF THE LAKE AND IS NO LONGER AVAILABLE OR USEFUL OR SUSCEPTIBLE OF BEING USED FOR NAVIGATION AND FISHING, AND IS NO LONGER IN FACT THE BED OF DONNER LAKE, AND THEREFORE IS FREE FROM THE PUBLIC TRUST FOR COMMERCE, NAVIGATION AND FISHING.
3. APPROVES THE BOUNDARY AND EXCHANGE AGREEMENT (BLA 145) AND AUTHORIZES ITS EXECUTION ON BEHALF OF THE COMMISSION; THE AGREEMENT BEING ON FILE IN THE OFFICE OF THE STATE LANDS COMMISSION AND BY REFERENCE MADE A PART HEREOF.

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4. AUTHORIZES THE ISSUANCE OF A NON-COMMERCIAL LEASE TO DART RESORTS FOR A PERIOD OF 49 YEARS IN CONSIDERATION OF ANNUAL RENT IN THE AMOUNT OF \$653.08 WITH THE STATE RESERVING THE RIGHT TO ADJUST THE RENTAL ON EACH FIFTH ANNIVERSARY OF THE LEASE.
5. AUTHORIZES THE ISSUANCE OF A PUBLIC AGENCY PERMIT TO THE TRUCKEE-DONNER RECREATION AND PARK DISTRICT FOR A PERIOD OF 49 YEARS AND IN CONSIDERATION OF THE PUBLIC USE AND BENEFIT, BUT RESERVING THE RIGHT TO REQUIRE A MONETARY CONSIDERATION AT ANY TIME.

Attachment:

Calendar Item 24 (4 pages)

CALENDAR ITEM

5/74
DBJ
W 503.743
BLA 145

24.

BOUNDARY AND EXCHANGE AGREEMENT BETWEEN THE
STATE AND DART INDUSTRIES, INC.,
DONNER LAKE, NEVADA COUNTY

In July of 1973, the State of California, acting by and through the State Lands Commission, brought an action in ejectment, for damages, and to compel the removal and prevent the maintenance of purprestures in Donner Lake which obstruct navigation and interfere with the exercise of the public trust over navigable waters. The Attorney General filed this action in the Nevada County Superior Court (Case No. 18595) against Dart Industries, Inc., and its subsidiaries and divisions (hereunder referred to as "Dart") involved with the Tahoe Donner subdivision in Nevada County, and others, seeking, among other things, the removal of certain land fill and a certain concrete boat ramp placed and constructed on the bed of Donner Lake by the defendants or their predecessors in interest.

It is the position of the State Lands Division:

1. that Donner Lake is a navigable body of water and the State of California acquired title to the lake bed by virtue of its sovereignty upon admission to the Union on September 9, 1850;
2. that the lands underlying the land fill and the boat ramp are owned by the State as sovereign lands comprising a portion of the bed of Donner Lake in its last natural condition, unaffected by artificial influences, and subject to the public trust and easement for commerce, navigation and fishery;
3. that portions of these lands are no longer in a natural condition, having been affected by artificial influences which include filling, grading and other construction along the shore of Donner Lake, as well as a dam near the outlet of the lake that has altered the natural elevation of the lake and created artificial storage capacity in Donner Lake; and
4. that such land has been improved, filled, and reclaimed by Dart or its predecessors in interest and has thereby been excluded from the public bed of the lake and is no longer available or useful or susceptible of being used for navigation and fishing, and is no longer in fact the bed of Donner Lake, and therefore is free from the public trust for commerce, navigation and fishing.

The uplands abutting the bed of Donner Lake were patented into private ownership by the federal government, and Dart claims ownership of certain portions of the uplands abutting the lake through a series of conveyances stemming

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from a federal patent, including portions of the lands which are the subject of the aforementioned action.

A bona fide dispute exists as to the location of the boundary between the Dart uplands and the sovereign lands of the State, and hence as to the ownership of the land underlying the land fill and the boat ramp.

The California Department of Fish and Game has notified the State Lands Commission that "the water quality of Donner Lake would be best served by not removing the existing fill" described in the complaint of the aforementioned action.

The State and Dart have proposed an exchange whereby Dart will grant to the State two pieces of property (Exhibit "B" - Parcels A and B) on the north shore of Donner Lake consisting of 0.37 of an acre and having a lake frontage of approximately 680 feet in return for: (a) the State issuing to Dart a patent for the land underlying the aforementioned landfill which contains 0.46 of an acre (Exhibit "B"); and (b) the State issuing to Dart a 49-year non-commercial lease to use submerged lands on the bed of Donner Lake underlying a boat ramp and a floating boat dock (Exhibit "B") occupying 0.14 of an acre and for an annual consideration of \$653.08 with the State reserving the right to fix a different rental on each fifth anniversary of the lease. Dart will also grant to the State, an easement in the public, ten feet in width, along the boundary between the sovereign bed of Donner Lake and the uplands of Dart. This easement will be parallel to and landward of the boundary line fixed by this agreement except in the area adjacent to or covered by the aforementioned landfill where this easement will be parallel to and landward of the landward edge of the riprap enclosing the landfill, for the purpose of allowing free passage around Donner Lake at all times.

This exchange would:

1. put under State ownership a usable and publicly accessible strip of lakefront property abutting Donner Lake, which property is at least of equal value to and can be more beneficially and efficiently used by the State and by the public than the lands underlying the landfill, which lacks access by means of a public road;
2. improve navigation and enhance the configuration of the shoreline for the improvement of the water and upland; and
3. permanently fix and establish the boundary between the sovereign lands of the State in the bed of Donner Lake, and the Dart uplands.

The boundary between the sovereign bed of Donner Lake and the uplands of Dart, as the lake existed in its last natural state, has been affected and controlled by artificial processes, including the maintenance of an artificial filling along the shore of Donner Lake. Consequently, there is substantial doubt and uncertainty as to the last natural location thereof, and, hence, the true boundary between the sovereign lands of the State and the Dart uplands is uncertain and in doubt.

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Therefore, in order to accurately fix and determine the boundary between the Dart uplands and the sovereign lands of the State, the State and Dart consider it expedient and necessary, and in the best interest of the State, Dart, and the public, to describe, determine, and permanently fix by agreement the position of the boundary along the shore of Donner Lake with respect to the aforementioned property. The proposed boundary line constitutes a fair and reasonable location for the last natural position, unaffected by artificial influences, of the boundary along these portions of the lake.

The State may enter into such boundary line agreements in settlement of litigation pursuant to the authority vested in the State Lands Commission in Division 6, Part 1 of the Public Resources Code.

The Truckee-Donner Recreation and Park District of Nevada County has applied to the State Lands Commission for a permit to manage and maintain the lands to be acquired by the State under the aforementioned boundary and exchange agreement and submerged lands adjacent thereto for the benefit of the public. It is proposed that a public agency permit encompassing an area of 2.34 acres be granted to the District for the above purpose for a period of 49 years, the consideration of which would be the public use and benefit. The Commission would further reserve the right to require a monetary consideration at any time.

The boundary and exchange agreement, of which the non-commercial lease to Dart is a part, and the public agency permit to the Truckee-Donner Recreation and Park District are exempt from environmental impact reporting requirements by the provisions of PRC Section 6371; CEQA of 1970 (PRC Sections 21,000 et seq.); 14 Cal. Adm. Code Section 15037; and 10 Cal. Adm. Code Section 2910(d).

A public meeting was conducted by staff of the State Lands Division on April 2, 1974, in the Emigrant Trail Museum at Donner Memorial State Park to present and consider the matters to be approved by the Commission in this item. This proposed boundary and exchange agreement has been reviewed and approved by the Office of the Attorney General.

EXHIBITS: A. Site Maps.
 B. Agreement and Lease Illustration.
 C. Report of April 2, 1974 Public Meeting.

IT IS RECOMMENDED THAT THE COMMISSION:

1. DETERMINE THAT NO ENVIRONMENTAL DOCUMENT HAS BEEN PREPARED FOR ANY OF THESE ACTIVITIES AS NONE IS REQUIRED UNDER THE PROVISIONS OF PUBLIC RESOURCES CODE SECTION 6371 AND SECTIONS 21,000, ET SEQ.; 14 CAL. ADM. CODE SECTION 15037; AND 10 CAL. ADM. CODE SECTION 2910(d).
2. FIND AND DECLARE THAT THE STATE LAND TO BE CONVEYED TO DART INDUSTRIES, INC., BY BLA 145 HAS BEEN IMPROVED, FILLED, AND RECLAIMED, AND HAS THEREBY BEEN EXCLUDED FROM THE PUBLIC BED OF THE LAKE AND IS NO LONGER

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AVAILABLE OR USEFUL OR SUSCEPTIBLE OF BEING USED FOR NAVIGATION AND FISHING, AND IS NO LONGER IN FACT THE BED OF DONNER LAKE, AND THEREFORE IS FREE FROM THE PUBLIC TRUST FOR COMMERCE, NAVIGATION AND FISHING.

3. APPROVE THE BOUNDARY AND EXCHANGE AGREEMENT (BLA 145) AND AUTHORIZE ITS EXECUTION ON BEHALF OF THE COMMISSION; THE AGREEMENT BEING ON FILE IN THE OFFICE OF THE STATE LANDS COMMISSION AND BY REFERENCE MADE A PART HEREOF.
4. AUTHORIZE THE ISSUANCE OF A NON-COMMERCIAL LEASE TO DART RESORTS FOR A PERIOD OF 49 YEARS IN CONSIDERATION OF ANNUAL RENT IN THE AMOUNT OF \$653.08 WITH THE STATE RESERVING THE RIGHT TO ADJUST THE RENTAL ON EACH FIFTH ANNIVERSARY OF THE LEASE.
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