MINUTE ITEM

This Calendar Item No. 49 was approved as Minute Item No. 49 by the State Lands Commission by a vote of 3 to 0 at its 10/30/81 meeting.

MINUTE ITEM

10/30/81
W 503.882
Judson
Hadly

49. AUTHORIZATION TO ADOPT WATER LEVELS AS THE LOW AND HIGH WATER MARKS OF LAKE TAHOE.

During consideration of Calendar Item 49, Executive Officer William Northrop read into the record a statement from Kevin Pedrotti of Assemblyman Wally Herger's Office requesting that this item be pulled from the agenda. Mr. Herger had not had sufficient time to review Item 49 and requested that it be pulled.

Deputy Attorney General Jan Stevens briefed Commissioners on the status of this item. Mr. Stevens wanted the record to be clear that this item could not be put over because of pending litigation and statutory limitations. He indicated action by the Commission on this item would be a reaffirmation of the recognized low water line levels at Lake Tahoe. It is necessary to have an interim operating position for litigation and lease purposes.

Acting Commissioner David Ackerman indicated his understanding that a petition for rehearing has been filed on the high water/low water decision. He questioned any impact action this item would have on this rehearing. Deputy Attorney General Jan Stevens indicated the Commission would be obligated to follow any decision from the California Supreme Court, but that a position is necessary in the meantime.

Chairman Kenneth Cory indicated a desire to adopt the item with the understanding it would be subject to change by the Court and the Commission at some future time.

Mr. Cory requested staff to have a report at every meeting, in the form of a Calendar Item, on the current status of this matter.

Mr. Bill Chidlaw, Attorney, spoke on behalf of shore owners at Lake Tahoe indicated this item is an attempt to set high and low water marks at Lake Tahoe without stating the purpose, while action on Item 50, Clear Lake, relates the purpose of adopting levels to litigation.

Chairman Kenneth Cory indicated the State's interest would be better served by not putting a reason in Item 49 and deleting the reason's in Item 50.

Assistant Executive Officer James Trout indicated a difference in item 49 and Item 50 in that the Commission is directly responsible for lands in Lake Tahoe while being in an oversight position in Lake County.

Upon motion duly made and carried, the recommendation presented in Calendar Item 49 was approved as presented by a vote of 3-0 with the understanding that this item be returned to the Commission each month hereafter until the Commission deems otherwise.

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CALENDAR ITEM

10/30/81
W 503.882
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49

AUTHORIZATION TO ADOPT WATER LEVELS AS
THE LOW AND HIGH WATER MARKS OF LAKE TAHOE

The California Supreme Court in State of California v. Superior Court (Fogerty) 29 Cal. 3d 240 in conjunction with its companion case, State of California v. Superior Court (Lyon, 29 Cal. 3d 210 has held that the bed of Lake Tahoe is owned by the State up to the low water mark and that the privately owned shorezone between the low and high water marks is impressed with a public trust for commerce, navigation, fishing, other recreational uses and for environmental purposes. The Fogerty decision further held that the boundary between public and private ownership should be located with reference to the Lake's current levels rather than its last natural levels.

Current water levels of Lake Tahoe can be determined in different ways. One way is to average arithmetically annual high and low levels. Another way is to follow those water elevations which have been recognized by the public and private parties alike as representing the high and low water marks on the lake. The staff recommends the latter method for the reasons stated below. Although this method is appropriate to the conditions at Lake Tahoe it is not necessarily appropriate to other waterways. Water levels at other waterways should be determined according to their own conditions.

1. Water levels at Lake Tahoe have been artifically raised since 1870 by means of a dam operated at its outlet where it pours into the Truckee River. The levels of the lake and the flows into the Truckee River have been subject to regulation under the direction of the United States government since 1915. In 1937 the United States agreed in the Truckee River Agreement that the dam would be operated so as not to raise the level of the water above the elevation of 6229.1 feet above sea level (Lake Tahoe Datum) or to allow water to recede below the elevation of the natural rim of the lake at elevation 6223 feet. Consequently the level of the lake has not risen above the elevation of 6229.1 since 1937. The level has not dropped below the 6223 elevation since that date except during two years as a result of severe drought.

2. The elevations of 6223 and 6229.1 feet have been widely recognized as the low and high water levels of Lake Tahoe by governmental entities and private parties since their adoption in the Truckee River Agreement. The provisions of this agreement relating to the operating levels of the lake were debated vigorously and thoroughly by the littoral interests and these elevations received the approval of a majority of landowners who expressed their opinions and a majority of the California representatives in the California-Nevada conference on the Lake Tahoe water controversy in the mid-thirties.

The United States Army Corps of Engineers, Tahoe Regional Planning Agency, California Tahoe Regional Planning Agency, this Commission, El Dorado and Placer Counties and the City of South Lake Tahoe have all since consistently recognized these elevations as the low and high water levels of the lake.

In 1953 this Commission surveyed the low water mark of Lake Tahoe at the elevation of 6223 feet. This survey was recorded in 1965. After completion of the survey the Commission advised owners of structures around the shore of the lake that they would be expected to obtain a permit for any structure located from elevation 6223 lakeward. It has since continuously used that elevation to represent the lake's low water mark in its leasing practice. Both public and private interests have relied on the Commission's survey of the low water mark.

The Commission has recognized the elevation of 6229.1 feet as the high water mark in its leasing practice. When it claimed title to the bed of the lake up to the high water mark that elevation was used.

Thus on the basis of more than 40 years of common recognition by public and private interests alike it is recommended that the Commission formally adopt the elevation of 6223 and 6229.1 feet as the low and high water marks at Lake Tahoe.

IT IS RECOMMENDED THAT THE COMMISSION:

1. ACTING PURSUANT TO THE AUTHORITY SET FORTH IN DIVISION 6 OF THE P.R.C., ADOPT THE ELEVATIONS OF 6223 AND 6229.1 FEET ABOVE SEA LEVEL, LAKE TAHOE DATUM, AS THE LOW AND HIGH WATER MARKS RESPECTIVELY OF LAKE TAHOE.