

MINUTE ITEM
This Calendar Item No. 39
was approved as Minute Item
No. 39 by the State Lands
Commission by a vote of 2
to 0 at its 3-2-88
meeting.

CALENDAR ITEM

A 32

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W 24091
BLA 258
Grimmett
Mckown
Stevenson

REQUEST FOR AUTHORIZATION TO ENTER A BOUNDARY LINE AGREEMENT
SETTLING TITLE TO A TRACT OF LAND
IN AND ALONG THE SAN JOAQUIN RIVER IN FRESNO COUNTY

APPLICANT: Gary R. and Sandra S. Elrod
306 E. Lisa
Fresno, California 93710

In Fall 1987, staff of the State Lands Commission was contacted by Gary R. and Sandra S. Elrod (Private Parties) regarding possible resolution of sovereign title rights in a tract of land riparian to the San Joaquin River in Fresno County, near the City of Fresno. The Private Parties had taken record title to the property early in 1987 with the intention, in the short term, of building a single-family residence.

The tract to which the Private Parties took title is a lot surveyed and sold by the United States abutting the south side of the San Joaquin River. It is the position of the Private Parties that title to the upland lot carries with it ownership of the bed of the San Joaquin River to its centerline, a view controverted by the State. The predecessors-in-interest of the Private Parties had recorded a Record of Survey showing a line within the River separating their property from that of record owners on the opposing bank. The parcel created using this line is the known maximum extent of the Private Parties' assertion of title in the bed of the San Joaquin. The Private Parties currently pay taxes on this parcel by demand assessment.

In recent years, several parcels of farm and open land along the San Joaquin River, between the Highway 99 crossing and Friant Dam, have been proposed for residential and commercial development. Local governments in the City of Fresno and the

counties of Fresno and Madera have and will continue to address land use planning issues as development pressures grow. At the same time, there is significant local and legislative support to establish a parkway along the River to expand public uses which are now held to a minimum. In response to these issues, the staff of the State Lands Commission and hired consultants of the Office of the Attorney General have studied and will continue to study the San Joaquin River from Friant Dam to the Highway 99 bridge, which includes the site of the property addressed in this calendar item. One purpose of this work is to develop accurate boundaries of State sovereign property for the use of local government in its land-use planning. This same information can be utilized to enter into boundary line agreements with landowners along the River. This is the first such agreement.

Staff has reviewed the historic information regarding navigation of the San Joaquin at the site of the subject property and the data relevant to boundaries within the subject property. This information led to the following conclusions:

1. In its last natural condition, the San Joaquin River at the site of the subject property was a navigable waterway and therefore is sovereign property of the State of California;
2. Under the holdings of the California Supreme Court, the State of California owns, as sovereign property, the land within the last natural bed of the San Joaquin River between its ordinary high water marks as that River traversed the subject property. Under established legal precedent, the State of California owns a public trust easement between the ordinary high and ordinary low water marks and fee title waterward of and between the ordinary low water marks of the San Joaquin River at the site of the subject property.
3. The subject property is bounded by the ordinary low water mark of the San Joaquin River and is subject to a public trust easement to the reach of the ordinary high water mark of the San Joaquin River;

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4. Water diversions, changes in flow regime caused by Friant Dam, and other man-made causes have contributed to unnatural conditions in the River at the subject property. For this reason, private and public land titles are uncertain, impeding the use of property for both public and private purposes.

The Private Parties's position is that the San Joaquin River is not now, and has never been, a navigable waterway of this State for land title purposes and that they hold fee title to the subject parcel free of any sovereign rights of the STATE.

The STATE and the Private Parties have arrived at a settlement of the dispute between them regarding their opposing title interests in the subject property. A document implementing the settlement and containing the conveyances between the parties is on file at the offices of the State Lands Commission. In general terms, it provides that:

1. The parties will set an ordinary high-water mark through the subject property as described in the Agreement.
2. The STATE will quitclaim to the Private Parties any interest it may hold, by virtue of its sovereignty landward of the agreed ordinary high water mark, free of the public trust for commerce, navigation and fisheries, recreation and preservation as open space. This property is referred to in the Agreement as the UPLAND PARCEL.
3. The Private Parties will quitclaim to the STATE as sovereign land subject to the public trust for commerce, navigation, fisheries, recreation, and open space all of their right, title, and interest in and to the land lying riverward of the agreed ordinary high water mark. This property is referred to in the Agreement as the PUBLIC TRUST PARCEL.
4. The settlement agreement does not call for separate determination of an ordinary low water mark. The Private Parties acknowledge that the STATE will hold fee title on the waterward side of the agreed ordinary high water mark and the Private Parties will hold fee landward of the agreed ordinary high water mark.

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5. The settlement agreement will resolve competing title claims in the subject parcel. It does not bind the State Lands Commission to a position regarding boundary lines of other land along the River.

The staff has thoroughly investigated all matters relevant to the subject parcel and believes that the settlement proposed is fully supported by existing evidence. If implemented, this boundary line agreement will benefit the STATE by establishing and recognizing sovereign ownership to a specific area within the San Joaquin River. Furthermore, the size and location of the land to be settled in the State will provide the general public with lateral access on dry land along the San Joaquin River at almost all times of year. The agreed ordinary high water mark will be adequately monumented by the staff of the State Lands Commission to allow its later relocation.

AB 884: N/A.

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Adm. Code 15061), the staff has determined that this activity is exempt from the requirements of the CEQA as a statutorily exempt project. The project is exempt because it involves the settlement of title and boundary problems.

Authority: P.R.C. 21080.

EXHIBIT: A. Site map for reference.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. ADM. CODE 15061 AS A STATUTORILY EXEMPT PROJECT PURSUANT TO P.R.C. 21080.11- SETTLEMENT OF TITLE AND BOUNDARY PROBLEMS.
2. AUTHORIZE THE EXECUTIVE OFFICER, OR HER DESIGNEE, TO EXECUTE AND TO DELIVER INTO ESCROW FOR RECORDATION IN THE OFFICE OF THE COUNTY RECORDER OF FRESNO COUNTY, THE SUBJECT BOUNDARY LINE AGREEMENT IN A FORM SUBSTANTIALLY SIMILAR TO THAT NOW ON FILE IN THE OFFICES OF THE STATE LANDS COMMISSION.

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3. AUTHORIZE THE EXECUTIVE OFFICER, OR HER DESIGNEE, AND/OR THE OFFICE OF THE ATTORNEY GENERAL, TO TAKE ALL STEPS SHE/THEY DEEM NECESSARY OR APPROPRIATE TO EFFECTUATE THIS AGREEMENT, INCLUDING REPRESENTATION OF THE COMMISSION IN ANY LEGAL ACTION TO DETERMINE THE LEGALITY OF THIS AGREEMENT.

