MINUTE ITEM

This Calendar Item No. C34 was approved as Minute Item No. 34 by the California State Lands Commission by a vote of 3 to 0 at its 6-2-03 meeting.

CALENDAR ITEM
C34

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J. Rusconi
P. Griggs
P. Pelkofer

CONSIDER APPROVAL OF A SETTLEMENT IN STATE OF CALIFORNIA V. CROWLEY MARINE SERVICES, INC., ET AL., DEL NORTE COUNTY SUPERIOR COURT; AND AUTHORIZING APPROPRIATE DISPOSITION OF THE WALKING BEAM

PARTY:
Crowley Marine Services, Inc.
Attn: Todd Busch
P.O. Box 2287
Seattle, Washington 98111

BACKGROUND:
Pursuant to the settlement entered between the parties to *Deep Sea Research, Inc. v. The Brother Jonathan*, (U.S.D.C. N. Dist. Cal.) No. 91 3899 LCB, the Commission issued Salvage Permit No. W25513 to Deep Sea Research, Inc. ("DSR") to conduct salvage of treasure trove on the SS *Brother Jonathan.* For salvage operations conducted during the fall of 2000, DSR chartered the vessel *American Salvor* operated by Crowley Marine Services, Inc. When the salvage operations were complete and the *American Salvor* tried to raise its anchors, the starboard bow anchor could not be raised free of the water because a large foreign object was attached to the anchor. The *American Salvor* returned to Long Beach harbor with the object suspended from the anchor. Upon making port, it was discovered that the foreign object was the "walking beam" from the engine of the *Brother Jonathan*. The walking beam was submerged in Long Beach Harbor where it remains to prevent its deterioration.

The staff of the Commission attempted to convince Crowley Marine Services, Inc. to either return the walking beam to the wreck site or pay for its conservation, but negotiations failed. Pursuant to Commission authorization, the Attorney General's Office filed the case entitled *State of California (State Lands Commission) v. Crowley Marine Services, Inc., et al.*, Del Norte County Superior Court No. CV UJ 01-1543

alleging violations of Public Resources Code section 6314 and negligence law for Crowley's unauthorized removal of the walking beam from the *Brother Jonathan* wreck site.

The Attorney General's Office and staff have negotiated a proposed settlement with counsel for Crowley. Crowley would pay the Commission the sum of $27,000.00. The money would be used to move the walking beam to Crescent City for the Del Norte County Historical Society, which has agreed to either conserve it for public display or place it at an underwater site with appropriate signage for viewing by scuba divers. Upon payment of the $27,000 by Crowley, the Commission will release Crowley from all claims arising under the complaint on file in this action and dismiss that complaint with prejudice.

The *Brother Jonathan* shipwreck site is listed on the National Register of Historic Places and on the California Register of Historical Resources. Accordingly, Commission staff is consulting with the State Historic Preservation Officer to ensure that the alternative chosen for the walking beam does not have a significant adverse effect on the Brother Jonathan shipwreck site. The walking beam will not be moved from Long Beach Harbor until the consultation is successfully concluded.

The Commission's staff and the Office of the Attorney General recommend that the Commission approve the settlement as outlined above.

PERMIT STREAMLINING ACT DEADLINE:

N/A

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14, California Code of Regulations, section 15060(c)(3)), the staff has determined that the settlement is not subject to the provisions of the CEQA because it is not a "project" as defined by the CEQA and the State CEQA Guidelines.

   Authority: Public Resources Code section 21065 and Title 14, California Code of Regulations, sections 15060(c)(3) and 15378.

2. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14, California Code of Regulations, section 15060(c)(3)), the staff has determined that the conservation of the walking beam is not subject to the provisions of the CEQA because it is not a "project" as defined by the CEQA and the State CEQA Guidelines.

Authority: Public Resources Code section 21065 and Title 14, California Code of Regulations, sections 15060(c)(3) and 15378.

3. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14, California Code of Regulations, section 15061), the staff has determined that the underwater placement of the walking beam on State tide and submerged lands is exempt from the requirements of the CEQA as a categorically exempt project. The project is exempt under Class 4, Minor Alterations to Land, Title 14, California Code of Regulations, section 15304.

AUTHORITY:
Public Resources Code section 21084 and Title 14, California Code of Regulations, section 15300.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE SETTLEMENT IS NOT SUBJECT TO THE PROVISIONS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15060(C)(3)), BECAUSE IT IS NOT A "PROJECT" AS DEFINED BY THE CEQA AND THE STATE CEQA GUIDELINES.

2. FIND THAT THE CONSERVATION ALTERNATIVE FOR THE WALKING BEAM IS NOT SUBJECT TO THE PROVISIONS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15060(C)(3)), BECAUSE IT IS NOT A "PROJECT" AS DEFINED BY THE CEQA AND THE STATE CEQA GUIDELINES.

3. FIND THAT THE UNDERWATER PLACEMENT OF THE WALKING BEAM ON STATE TIDE AND SUBMERGED LANDS IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 AS A CATEGORICALLY EXEMPT PROJECT, CLASS 4, MINOR ALTERATIONS TO LAND; TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15304.

4. AUTHORIZE THE $27,000.00 SETTLEMENT TO BE USED TO MOVE THE WALKING BEAM TO THE CRESCENT CITY AREA AND, TO THE EXTENT THAT FUNDS ARE AVAILABLE BEYOND THE MOVING COST, TO CONSERVE THE WALKING BEAM OR PLACE IT IN AN UNDERWATER SITE OFFSHORE CRESCENT CITY.

5. AUTHORIZE THE ATTORNEY GENERAL'S OFFICE AND COMMISSION STAFF TO TAKE ALL STEPS NECESSARY TO FINALIZE THE SETTLEMENT ENTERED BETWEEN THE COMMISSION AND CROWLEY AND TO IMPLEMENT MOVING THE WALKING BEAM TO THE CRESCENT CITY AREA FOR CONSERVATION OR PLACEMENT AT AN UNDERWATER SITE OFFSHORE CRESCENT CITY.