

CALENDAR ITEM C97

A Statewide

10/19/12

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LEGISLATIVE UPDATE

INTRODUCTION:

State Lands Commission (Commission) sponsored, monitored, and adopted positions on several legislative proposals introduced in the 2011-12 legislative session affecting lands under the Commission's jurisdiction. This report provides a legislative update on these bills.

The 2011-12 legislative session produced two important pieces of chaptered legislation directly impacting the Commission. The first, AB 2082 (Atkins), Chapter 247, Statutes of 2012, was sponsored by the Commission and authorizes the use of administrative penalties as an approach to bring an individual who trespasses on state-owned lands or waterways into compliance with the law. The second, AB 2620 (Achadjian), Chapter 206, Statutes of 2012, was sponsored by the Pacific Merchant Shipping Association and adds reporting requirements for local trustees of granted public trust lands, requires the Commission to increase its oversight of granted public trust lands, and requires the Commission to evaluate its current staffing needs through a workload analysis report to be submitted to the Legislature.

Two additional bills sponsored by the Commission were chaptered in the 2011-12 legislative session, including: 1) AB 1847 (Lowenthal), Chapter 118, Statutes of 2012, which grants three Public Trust Parcels acquired by the Commission as part of a title settlement and land exchange agreement between the State, acting by and through the Commission, and the City of Long Beach, to the City in trust; and, 2) SB 1577 (Senate Committee on Natural Resources & Water), Chapter 286, Statutes of 2012, which grants in trust to the City of Newport Beach all the right, title, and interest of the state in a Public Trust Parcel located within Marina Park in the City.

Unfortunately, one legislative proposal sponsored by the Commission, AB 1054 (Skinner), failed passage on the Senate Floor on the final day of the legislative session due to concerns about its necessity from several Senators, and due to opposition from the California Independent Petroleum Association. AB 1054 would have delayed the effective date of a quitclaim deed filed to terminate all or any portion of an oil, gas,

geothermal, or mineral extraction lease with the Commission until the land underlying those operations is reclaimed or restored, consistent with existing law.

The following summaries provide an update on each legislative proposal sponsored or supported by the Commission in 2012.

1) AB 2082 (Atkins) Public lands: State Lands Commission: violations
Status: Chapter 247, Statutes of 2012 (Public Resources Code Sections 6224.3, 6224.4 and 6224.5)
Position: Sponsor

This new law allows the Commission to use administrative penalties as an approach to bring an individual who trespasses on state-owned lands or waterways into compliance with the law. This law is intended to address the costly and time consuming legal process currently required to address illegal structures or facilities on state-owned lands under the Commission's jurisdiction, and to deter trespass. An equally important purpose is to preserve public trust lands, waterways, and resources for the benefit of the public, and to ensure that California is meeting its responsibilities and obligations as a trustee.

AB 2082 authorizes the Commission to impose a penalty of not more than \$1,000 a day or an amount that is not more than 60% higher than the full fair market rental against a person with an unauthorized structure or facility. The penalty shall be imposed from the first day of an order to the day when the violation is cured.

In determining the appropriate penalty, the Commission is required to consider six different mitigating factors, including (1) the physical extent of the violation on the land under the Commission's jurisdiction; (2) the degree of culpability of the violator; (3) the degree of cooperation of the violator and whether the structure or facility is susceptible to removal or the violation is susceptible to resolution; (4) any prior history of violations of statutes or leases pertaining to lands under the Commission's jurisdiction and owned by the state, including the past history of the violator in taking all feasible steps or procedures necessary or appropriate to correct a violation; (5) the extent to which the violation causes environmental harm or impairs public access to trust lands; and, (6) any factor determined by the Commission to be relevant to a fair and just result, and in the best interest of the State.

Before the Commission considers whether to impose a penalty for trespass, it must first provide a written 30-day notice to the person against whom it seeks to impose a penalty. The notice must include the date, time, and location of the Commission hearing where the person may appear and be heard.

AB 2082 also provides an amnesty period from penalties if a person either remedies a violation by July 1, 2013, or submits a notice to the Commission that his/her structure or facility is potentially in trespass and the person remedies the violation within six months of the notice.

AB 2082 authorizes the Commission to adopt regulations that are necessary or useful to carry out its provisions, and expressly authorizes the Commissioners to act as the presiding officers at a hearing to consider imposing a penalty.

Facilities owned by telegraph, telephone, and franchised cable television corporations are exempt from the administrative penalty provisions in AB 2082. In addition, infrastructure owned by an electrical or gas corporation is not subject to a penalty if the corporation can demonstrate that it has not received notice that it does not have existing land rights for its structure or facility, and if it remedies the violation or submits a completed lease application, or files with a court a motion to perfect a prescriptive easement, within six months of the date of the violation. In regard to the latter, this is because this infrastructure is unique across the state, often predating the Commission's jurisdiction over state-owned land, and because staff is unaware of any problems with regard to resolving disputes related to trespass between the Commission and regulated electric or gas utilities.

2. AB 2620 (Achadjian) Tidelands & submerged lands: granted public trust lands

Status: Chapter 206, Statutes of 2012 (Public Resources Code Sections 6009.1, 6305, 6306 and 6320)

Position: Support

This new law requires the Commission to prepare a workload analysis and report to the Legislature on or before September 1, 2013, regarding the resources necessary for the Commission to fulfill its oversight responsibilities over legislatively granted public trust lands. AB 2620 also improves the Commission's oversight over granted lands by codifying local trustee duties and requiring all funds received or generated from trust lands or assets to be segregated in separate accounts from non-trust received or generated funds. This law further requires that the October 1st financial reporting statement required under existing law, be accompanied by a standardized reporting form developed by the Commission. The information provided in the statement and form will be a public record and posted on the Commission's internet Web site.

Financial reporting statements filed by local trustees come in all different types of formats, which make it difficult for staff to analyze. For example, Public Resources Code § 6306 requires that on or before October 1st of each year, a trustee shall file with the Commission a detailed statement of all revenues and expenditures relating to its trust lands and assets. In response to this mandate, a Comprehensive Annual Financial report is often submitted identifying all of the city's funds and operations. Although this report may meet the minimum requirements of the law, these documents do not clearly identify revenues and expenditures associated with the trustee's public trust lands and assets. AB 2620 addresses this problem by authorizing the Commission to prepare a standardized reporting form that trustees will submit along with their more detailed statement. This is intended to improve staff's ability to review the revenues and expenditures generated from granted lands and ensure consistency with trust principles.

Additionally, codifying trustee duties makes the trustee's responsibilities explicit. This is helpful because, although these fiduciary duties are identified in case law and individual granting statutes, they are not organized and placed together in one location. AB 2620 creates an organized list of duties that appropriately frames the law requiring that revenues received from trust lands and assets be expended only for trust consistent uses. This provision is intended to help trustees understand their obligation to the trust and act as a deterrent against misuse of funds dedicated for public trust uses.

3) AB 1847 (Lowenthal) City of Long Beach: grant of public trust lands
Status: Chapter 118, Statutes of 2012
Position: Sponsor

This new uncoded law grants three Public Trust Parcels acquired by the Commission as part of a title settlement and land exchange agreement between the State, acting by and through the Commission, and the City of Long Beach, to the City in trust. The public trust lands granted to the City, the Bixby Public Trust Parcel, the Colorado Lagoon Public Trust Parcel, and the Marine Stadium Channel Public Trust Parcel, were acquired by the Commission as part of the Queensway Bay Title Settlement and Land Exchange Agreement approved by the Commission on June 23, 2011. This title settlement and land exchange agreement, executed in July 2011, and signed by the Governor on August 8, 2011, includes a provision that the Commission and the City will pursue legislation to include these three final public trust parcels in the City's statutory trust grant. Assembly Bill 1847 fulfills this commitment by granting the three final Public Trust Parcels to the City of Long Beach as part of the City's statutory trust grant, as provided for in the approved agreement.

4) SB 1577 (Senate Natural Resources & Water Committee) Resources: public trust lands: City of Newport Beach
Status: Chapter 286, Statutes of 2012
Position: Sponsor

This new uncoded law grants in trust to the City of Newport Beach all the right, title, and interest of the State in a Public Trust Parcel located in the City and requires that the City manage this land in accordance with its statutory grant.

SB 1577 finalizes a Title Settlement and Land Exchange Agreement between the City and the Commission involving a boundary dispute. This agreement was approved by the Commission on September 1, 2011, and signed by the Governor on January 13, 2012, and includes a provision that the Commission and the City will pursue legislation to include the Public Trust Parcel in the City's statutory trust grant. SB 1577 fulfills this commitment by including the Public Trust Parcel in the City's statutory trust grant, as provided for in the approved Agreement.

- 5) AB 298 (Brownley) Single-use carryout bags**
Status: Held on the Senate Appropriations Suspense File
Position: Support

This bill, sponsored by Californians Against Waste, would have banned stores that have a certain amount of sales or retail floor space from providing single-use carryout bags and would have required stores to make recycled paper, compostable, or reusable bags available for purchase by customers. This bill was supported by a long list of environmental organizations and local governments, and opposed by business organizations and plastic bag manufacturers.

- 6) AB 752 (Brownley) Sea level rise planning**
Status: Held in the Senate Natural Resources & Water Committee
Position: Support

This bill, sponsored by the California State Controller, would have required local trustees of granted public trust land who receive at least \$250,000 per year in public trust revenues to prepare sea level action plans by July 1, 2013. This bill would also have encouraged other local trustees of granted public trust lands to prepare sea level action plans. The plans would have been required to include an assessment of impacts based on a range of sea level rise potentials, including fiscal impacts to public trust lands and adaption strategies for those impacts.

- 7) AB 1054 (Skinner) Public lands: oil, gas, geothermal, and mineral leases**
Status: Failed passage on the Senate Floor on 20-17 vote
Position: Sponsor

This bill would have delayed the effective date of a quitclaim deed filed to terminate all or any portion of an oil, gas, geothermal, or mineral extraction lease with the Commission until the land underlying those operations is reclaimed or restored, consistent with existing law. This bill was intended to improve the Commission's oversight over state-owned land and to decrease risk to the State by requiring lessees to maintain insurance and bonding requirements until reclamation or restoration is complete.

The California Independent Petroleum Association opposed this bill. The Association contended that there is little benefit to the State to requiring oil and gas operators to seek additional regulatory approval from the Commission, because oil and gas wells have to be prepared for plugging and abandonment under existing law, subject to the approval of the Division of Oil, Gas and Geothermal Resources.

The Association also objected to including oil and gas leases within the provisions of the bill, and preferred a dual track quitclaim process with a distinction made between those lessees with surface facilities and those without.

8) AB 2005 (Garrick) Oil spills: nontank vessels
Status: Chapter 543, Statutes of 2012
Position: None

This new law requires, until January 1, 2014, the owner or operator of a nontank vessel that is not used for commercial purposes and weighs between 300 and 400 gross tons, to submit evidence of financial responsibility, payment of fees, vessel particulars and other information required by the Administrator to the Oil Spill Prevention and Response (OSPR) 96 hours prior to the vessel's arrival in state waters. These vessels would be permitted to submit other required documents to the Administrator within 14 days after arrival of the vessel. The intent of this law is to streamline regulatory requirements to encourage more large yachts to visit California and attend the America's Cup event in the San Francisco Bay.

9) AB 2267 (Hall) Marine resources and preservation
Status: Held on the Senate Appropriations Suspense File
Position: None

This bill would have modified the California Marine Resources Legacy Act to revise the calculation of cost savings of partial offshore oil platform removal that must be shared with the State, and to require the Ocean Protection Council's net marine environmental benefit analysis to also consider adverse impacts to air quality and include consultation with the Air Resources Board.

The purpose of this bill was to include several additional expenses in the cost savings calculation for an owner or operator of an offshore oil structure to partially remove its structure, rather than fully remove (decommission) the structure, and to include air quality as a factor when determining whether partial removal would provide a net benefit to the marine environment.

The Commission's most recent experience with decommissioning involves four platforms that were installed and operated by Chevron for oil and gas production after receiving leases from the Commission. These platforms were installed between 1958 and 1965. All platform wells were shut-in prior to September 1992. Decommissioning of the four platforms was approved by the Commission and the California Coastal Commission in 1994, after adoption of a Mitigated Negative Declaration (MND). The MND was based on the understanding that the shell mounds would remain "largely intact" during and following platform removal, and thus there would be very limited re-suspension of material during decommissioning. The Commission's permit required that platform sites be "trawlable" (i.e., to not preclude trawling by commercial fishermen) after platform removal. Due to the size of the mounds, this requirement cannot currently be met.

There are currently four platforms operating in state waters, none of which will be ready for decommissioning before January 1, 2017.

10) AB 2284 (Chesbro) Illegal drug cultivation on public lands
Status: Chapter 390, Statutes of 2012
Position: Support

This new law imposes additional civil penalties for cultivating a controlled substance on resource land under the jurisdiction of certain state or federal agencies, including the Commission, and within a timberland production zone. It also authorizes a peace officer to stop a vehicle transporting agricultural irrigation supplies in plain view if the vehicle is traveling on a rock or unpaved road within a timberland production zone or on resource lands within these same jurisdictions.

AB 2284 is in response to ongoing problems with marijuana cultivation on state resource lands. It increases civil penalties for three commonly charged violations associated with marijuana cultivation—streambed alteration, water pollution and refuse disposal. Increasing the penalties for these violations is intended to prevent damage to resource land and preserve it as a safe place to recreate. It is intended to give law enforcement agencies the tools to prevent the establishment of illegal marijuana grow sites on resource land and to recuperate some of the resources spent to investigate, eradicate and clean up grow sites.

11) AB 2443 (Williams) Vessels: registration fee: Quagga and Zebra Mussel Infestation Prevention Program
Status: Chapter 485, Statutes of 2012
Position: None

This new law imposes a dreissenid mussel infestation prevention fee on recreational vessel owners, as determined by the Department of Boating and Waterways. The fee revenue would be deposited in the Department's Harbors and Watercraft Revolving Fund and be available, upon appropriation by the Legislature, for a grant program to prevent and control dreissenid mussel infestation. AB 2443 is intended to protect California's lakes and rivers from the environmental and economic harm caused by invasive dreissenid mussels.

12) AB 2595 (Hall) Desalination
Status: Held on the Senate Appropriations Suspense File
Position: None

This bill would have required the Ocean Protection Council to convene a 25 member Seawater Desalination Permit Improvement Task Force to review the current permitting processes required by all state regulatory agencies for seawater desalination facilities. The task force would have been required to prepare and issue a report to the Legislature by December 2014, making recommendations for legislative and administrative actions that would improve these processes while maintaining current regulatory protections.

This bill was intended to improve the desalination permitting process while maintaining current regulatory protections. The sponsor, Caldesal, agreed to drop the bill in return for a commitment from the Ocean Protection Council, State Lands Commission, State Coastal Commission and the State Water Resources Control Board to participate in two preliminary desalination conferences in October and a full conference early next year.

**13) AB 2649 (Ammiano) Tidelands & submerged lands: San Francisco
seawall lots
Status: Chapter 757, Statutes of 2012
Position: None**

This new law will: (1) temporarily terminate the public trust use restrictions from Seawall Lot 322-1 in San Francisco if the Commission makes certain findings; (2) authorize the Port of San Francisco (Port), conditioned on the approval of the Commission, to lease Seawall Lot 322-1 with revenues going into a separate account in the harbor public trust fund to be expended for the preservation of historic piers and structures, or for the construction and maintenance of waterfront plazas and open space; (3) allow the Port to provide a rent credit or other waiver or deferral of rent that results in a below fair market value rent in connection with a non-trust lease of Seawall Lot 322-1 or Seawall Lot 337, contingent upon the Commission's approval and the Port applying the value of the credit as an offset against fees levied by the City on development projects located on Pier 70 or on projects located on Seawall Lot 337; and, (4) allow the Port to transfer development rights associated with a historic pier or historic resource for a period of 66 years or less.

AB 2649 is intended to generate and preserve funds for public trust purposes on the San Francisco waterfront and to address the lack of affordable housing in the San Francisco Bay Area. Commission staff worked closely with the Port and legislative staff on the language in this bill to ensure appropriate Commission oversight.

**14) SB 1066 (Lieu)
Status: Chapter 611, Statutes of 2012
Position: Support**

This new law authorizes the State Coastal Conservancy (Conservancy) to address the impacts of climate change on coastal resources by allowing the Conservancy to undertake coastal projects within its jurisdiction and to award grants to public agencies and nonprofit organizations for climate change projects. In awarding grants, the Conservancy is required to prioritize projects that maximize public benefits, including reducing greenhouse gas emissions, reducing hazards to harbors and ports, preserving and enhancing coastal wetlands and natural lands, conserving biodiversity, and providing recreational opportunities.

15) SB 1360 (Simitian) vessels

Status: Chapter 279, Statutes of 2012

Position: Support

This new law deletes the sunset date on the ban in the California Clean Coast Act for large passenger vessels to release sewage into the marine waters of the State and the requirement for vessels to notify the California Emergency Management Agency of any sewage release into marine waters of the State. These changes are consistent with a recent federal regulation banning sewage discharges in California's marine waters and establishing a no discharge zone along California's coast and surrounding islands.