

A meeting of the State Lands Commission was held in Room 180 Business and Professions Building, Sacramento, on July 6, 1950, at 11:00 A.M.

Present: Honorable James S. Dean, Chairman
Honorable Goodwin J. Knight, Member

Honorable Thomas H. Kuchel, Member
(attended the afternoon session)

1. UPON MOTION DULY MADE AND UNANIMOUSLY CARRIED, THE MINUTES OF THE MEETING OF APRIL 28, 1950, WERE APPROVED AND CONFIRMED AS SUBMITTED.

2. UPON MOTION DULY MADE AND UNANIMOUSLY CARRIED, IT WAS DECIDED TO DEFER SETTING A DATE FOR THE NEXT COMMISSION MEETING.

3. (SOUTHERN PACIFIC COMPANY LEASE - 6TH AND CHANNEL STREETS, SAN FRANCISCO - W.O. 555, P.R.C. 462) The Commission was informed that under letter of August 17, 1949, the Southern Pacific Company applied for a determination of the terms and conditions of an agreement leading to the possible lease of certain street areas in the vicinity of Sixth and Channel Streets, San Francisco, California. The Southern Pacific Company claims ownership by adverse possession or otherwise of the street areas in which the State may have no interest at all or may have fee ownership subject to easements or may have full fee simple title. The Southern Pacific Company is desirous of quieting title in order that it may proceed with a project which involves the erection of large warehouses extending over the streets and which are estimated to cost in excess of \$6,000,000.00. The matter was reported to the Commission at its meeting of September 15, 1949, and the following action was taken:

"Upon motion duly made and unanimously carried, a resolution was adopted authorizing the Executive Officer to negotiate a fifty-year lease with the Southern Pacific Company on 6.98 acres of streets in the San Francisco area bounded by 5th, 6th, Channel and Indiana Streets, with right of sub-lease, at an annual rental of 6 per cent of the appraised value of the land involved and report back to the Commission the results of such negotiations for final action."

Negotiations have been proceeding since the action of the Commission on September 15, 1949. On September 22, 1949, the Chief Administrative Officer of the City and County of San Francisco approved of the project by letter. On October 21, 1949, the Southern Pacific Company furnished funds for costs of appraisal and expenses to be incurred by the Commission in the negotiations. On November 18, 1949, the E. B. Field Company appraised the street areas involved as being worth \$415,800.00. As a result of these and continued negotiations in which the Attorney General's office in San Francisco participated, an agreement has been drafted which the Southern Pacific Company has indicated it is prepared to execute and which the Division of State Lands can recommend to the Commission. Salient points of the proposed agreement are as follows:

1. The Southern Pacific Company is to pay a consideration of \$3,000.00 on execution of the agreement as advance rental (this is to be retained by the State if final adjudication gives the State no interest).

2. The State agrees to bring quiet title action with the understanding that the agreement and proposed lease are to have no bearing in that action.
3. The Southern Pacific Company agrees to lease from the State whatever interest the latter may have in the described street areas for a period of fifty years beginning January 1, 1951, provided that at the time of adjudication the Company may release the whole or any part of the street areas as of January 1, 1951, with ratable reduction in the rental.
4. The annual rental is to be 6% of the appraised value. If the State has full fee simple title without any encumbrances, the annual rental will begin at \$24,948.00.
5. Provision is made for re-appraisal at the option of either party at 15 year intervals. The rental is then to be adjusted accordingly for the ensuing periods at 6% of the new appraised value.
6. If adjudication results in less than full fee interest by the State, such interest is to be appraised and rental will be at the rate of 6% of the value determined.
7. Appraisers are to be appointed by the State and the cost of appraisal to be borne by the lessee.
8. Provisions are made for ratable adjustment of rentals in case different areas or interests result.
9. Rentals are to be paid up in full to the end of the calendar year during which final adjudication is made and annually in advance thereafter.
10. No transfer of the lease is permitted without approval by the State; however, authority is provided for sub-leases with the lessee retaining full responsibility for the basic lease.
11. Paragraphs 3, 4, 7, 9, 10, 11, 12, 16, 17, 18, of the standard Commission lease form are included.
12. No performance bond is to be required; this is because of the character and cost of the structures to be placed on the property which in themselves constitute a substantial guarantee of performance.
13. All structures, buildings and other facilities on the premises leased are to become the property of the State upon the expiration of the lease or its earlier termination.
14. The Southern Pacific Company is to have the opportunity to meet the highest bid for renewal of the lease if at that time the Commission may legally permit such action.

Messrs. Foulds, Johnson, and Lafferty of the Southern Pacific Company and Miriam E. Wolff, Esq., Deputy Attorney General, appeared before the Commission in connection with this matter. The Commission was informed that the suit proposed would not be a "friendly suit" but would in fact decide ownership of Street

areas, about which there is a difference of opinion.

UPON MOTION DULY MADE AND UNANIMOUSLY CARRIED, A RESOLUTION WAS ADOPTED AUTHORIZING THE EXECUTIVE OFFICER TO EXECUTE AN AGREEMENT WITH THE SOUTHERN PACIFIC COMPANY UNDER WHICH THE STATE IS TO INSTITUTE AND PROSECUTE A QUIET TITLE ACTION FOR SUCH INTERESTS AS THE STATE MAY HAVE IN THE STREET AREAS IN THE VICINITY OF SIXTH AND CHANNEL STREETS IN THE CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA, SAID AGREEMENT TO PROVIDE FOR THE LEASING OF SUCH STREET AREAS OR SUCH INTEREST AS THE STATE HAS IN SAID STREET AREAS FOR A PERIOD OF FIFTY YEARS TO THE SOUTHERN PACIFIC COMPANY, ALL AS SET FORTH IN DETAIL IN THE COPY OF THE AGREEMENT WHICH FOLLOWS AND IS A PART OF THE MINUTES OF THIS MEETING.

"AGREEMENT AND LEASE

"THIS AGREEMENT made this day of 1950, between STATE OF CALIFORNIA, acting by and through the State Lands Commission (hereinafter called State) and SOUTHERN PACIFIC COMPANY, a Delaware corporation (hereinafter called Company);

"WITNESSETH:

"RECITALS

"The Company owns and is in possession of the various lots and blocks abutting upon those certain areas of land in San Francisco, hereinafter called "Closed Street Areas", shown shaded red upon print hereto attached, and is in possession of and claims to own said Closed Street Areas. The Company, on the one hand, desires to quiet its title as against the State as to said Closed Street Areas.

"The State, on the other hand, claims to own said Closed Street Areas, and desires to quiet its title to said Closed Street Areas as against the Company; and

"The parties hereto desire, in the event that the State should establish its ownership of said Closed Street Areas, or some interest therein, by final judgment of court as hereinafter provided, that the State should lease to the Company such Closed Street Areas, or such interest, if any, therein as the State may be so declared to own, upon the terms and conditions, and for the period or periods hereinafter set forth.

"AGREEMENTS

"NOW, THEREFORE, in consideration of the payment by the Company to the State of the sum of \$3,000.00, receipt whereof by the State is hereby acknowledged (said payment being hereinafter referred to as the advance rental payment), the State agrees to commence and prosecute in due course such suits or proceedings as may be appropriate for the purpose of establishing of record by final judgment of court either the ownership by the State of said Closed Street Areas, or whatever interest the State may have therein, or that it has no interest, as the case may be; it being understood that the Company may defend such suit in such manner as may be appropriate to determine whether the Company has full ownership of, or any lesser interest or rights in, said Closed Street Areas, as against the State.

If the final adjudication should be that the State has no interest in said Areas whatsoever, then this agreement shall terminate and be of no further force or effect, the State, however, to retain said advance rental payment in consideration of the execution of this agreement and lease and the agreements herein embodied and the Company agrees to make no claim therefor. In the event that there is a final adjudication that the State has an interest in said property, then the advance rental payment shall be credited to the first year's rental.

"It is expressly agreed that for the purposes of such litigation this agreement shall not be admissible in evidence or have any bearings thereon, i.e., such litigation shall be prosecuted and defended without either party being prejudiced in any way by the execution of this agreement, and to all intents and purposes as though this agreement had never been made.

"Subject to the contingencies and agreements aforesaid and effective only if and when it shall be determined by final judgment of court that the state has ownership of, or some lesser interest in, the said Closed Street Areas, the State acting by and through the State Lands Commission pursuant to authority contained in Division 6 of the Public Resources Code of the State of California, and the rules and regulations adopted thereunder, does hereby demise and lease to the Company, and the Company does hereby lease from the State, for a period of 50 years commencing as of January 1, 1951, all of its right, title and interest in the Closed Street Areas above referred to, said Closed Street Areas being more particularly described as follows, to wit:

"(1) That portion of Fifth Street lying between the southeasterly line of Channel Street and the southeasterly line of Hooper Street.

"(2) That portion of Hooper Street lying between the southwesterly line of Fifth Street and the northeasterly line of Sixth Street.

"(3) All of George Street, which street lies between the southeasterly line of Hooper Street and the northwesterly line of Hubbell Street.

"(4) That portion of Irwin Street lying between the southwesterly line of George Street and the northeasterly line of Sixth Street.

"(5) That portion of Hubbell Street lying between the southeasterly prolongation of the northeasterly line of George Street and the northeasterly line of Sixth Street.

"(6) All of Noble Street, which street lies between the southeasterly line of Hubbell Street and the northwesterly line of South Street.

"(7) That portion of South Street lying between the southeasterly prolongation of the northeasterly line of Noble Street and the northeasterly line of Sixth Street.

"Lessee shall pay to the State as consideration for said lease an annual rental on the basis of a sum equivalent to 6% on the present appraised value of \$415,800.00 or \$24,948.00; provided, however, that in the event that either party desires a reappraisal such reappraisal may be had by giving the other party notice in writing of the desire for the said reappraisal within sixty days prior to January 1, 1966, January 1, 1981 and January 1, 1996. In the event of such

reappraisal the appraiser shall be designated by the State subject to lessee's disapproval for reasonable cause set forth in writing, and lessee expressly agrees to bear the cost of reappraisal. The said reappraisal shall represent the base value of the property as of the first day of January for the next fifteen year period succeeding the reappraisal, and the amount of rental provided for in this lease shall be adjusted accordingly, and lessee expressly agrees to pay the amount of rental as so adjusted.

Provided further that in the event that it is finally adjudicated that the State has ownership of the fee impressed with an easement of ingress and egress by the adjoining property owner then, in that event, such lesser interest shall be appraised by an appraiser designated by the State, subject to lessee's disapproval for reasonable cause set forth in writing, and the annual rental shall be a sum equal to 6% of such appraised value of such lesser interest, and such appraisal shall be deemed the value of the property so long as the interest of lessor remains unchanged, but a reappraisal may be had by lessor at any time during the term of this lease when or if lessor's interest in the property changes, and lessee expressly agrees to bear the cost of such appraisal and reappraisal. The appraiser shall be designated by the State, subject to lessee's disapproval for reasonable cause set forth in writing. Such reappraisal shall represent the base value of the property as of the first day of the month succeeding the reappraisal for the next fifteen year period succeeding the reappraisal, and the amount of rental provided for in this lease shall be adjusted accordingly, and lessee expressly agrees to pay the amount of rental as so adjusted. Thereafter after each succeeding fifteen year period, either party may obtain a further reappraisal upon the same terms and conditions as hereinabove set forth by giving the other party notice in writing within sixty days prior to the termination of the fifteen year period.

"The foregoing provisions as to rental, appraisal and reappraisal shall apply as to any portion of the foregoing areas as to which it is finally adjudicated that the State has an interest and the rent shall be ratably adjusted on an area basis in proportion to the interest that the State may have to the whole, and all of the remaining provisions of this lease shall apply to such portion.

"In the event of an adjudication that the State has an interest in said Closed Street Areas, then the lessee shall forthwith pay all rentals which have accrued hereunder up to the end of the then current calendar year, and shall thereafter pay such rentals in advance on the first of each calendar year thereafter; provided, however, that at the time of adjudication the Company shall have the right to release such leasehold interest as to the whole or any portion or portions of the Closed Street Areas, with ratable reduction in the amount of rental herein provided.

"The Company shall not transfer this agreement without the prior written consent of the State first had and obtained; but the Company may sublet any portion or portions of the premises for any lawful purposes, but shall be and remain primarily liable to the State for the rentals and other commitments and agreements provided for herein, and the Company agrees that it will notify the State in writing of its subleases.

"In the event that such litigation between the State and the Company shall result in a final judgment or judicial declaration that the State owns the underlying fee to the Closed Street Areas and that the Company owns an easement

therein for roadway purposes as a means of ingress and egress to the various lots and blocks abutting thereon, and by reason thereof this lease should become effective as to such underlying fee simple ownership, it is understood that the exclusive occupancy of the premises by the Company hereunder shall not constitute an abandonment by the Company of such easement.

"When and if this lease becomes effective the following provisions shall apply throughout the original term of said lease and each and every renewal thereof as above provided:

"1. That the Company will pay to the State the said rental consideration reserved to the State, in accordance with the schedule contained herein, to the State Lands Commission, Room 301 California State Building, 217 West First Street, Los Angeles 12, California, without deduction, default or delay; and, in the event of failure of the Company so to do, or in the event of a breach of any of the other covenants contained within this agreement, or failure to observe the terms, conditions, restrictions or time limitation herein contained, to be kept, performed and observed, and such failure or breach shall continue for 30 days after written notice thereof to the Company, it shall be lawful for the State to re-enter into and upon the demised premises, and to remove all persons and property therefrom, and to repossess and enjoy the herein described demised premises as in the first and former estate of the State, anything to the contrary herein contained notwithstanding;

"2. That the described land shall be used during the term hereof only for lawful commercial purposes, i.e., for railroad and/or industrial purposes.

"3. That the State expressly reserves the right to grant easement or crossings, in, upon and under the demised premises, and nothing herein contained shall be construed as limiting the powers of the State to lease, convey, or otherwise transfer or encumber, during the life of this agreement, the hereinbefore described State lands for any purpose whatsoever, but no such grant, lease conveyance, transfer or encumbrance shall be inconsistent or incompatible with the rights or privileges granted to the Company by this agreement.

"4. That the Company shall be liable for and agrees to indemnify the State against any loss, damage, claim, demand or action, caused by, arising out of, or connected with the construction or maintenance of structures upon, or the use by the Lessee and/or agents thereof, of the demised premises.

"5. That the Company shall observe and comply with all rules and regulations now promulgated by any agency of the State of California having jurisdiction therein and such reasonable rules and regulations as may hereafter be promulgated by any agency of the State of California having jurisdiction therein; and the Company shall at all times take suitable precautions to prevent pollution and contamination of waters.

"6. That the State, through its authorized agents, shall have the right at all reasonable times to go upon the demised premises for the purpose of inspecting same.

"7. That there is reserved to the State all natural resources, timber and minerals, including oil or gas in or upon the described land and the right to grant in, over and across said land, leases, easements and/or rights-of-way

to extract or remove such natural resources, timber or minerals as provided by law and the rules and regulations of the State Lands Commission and without compensation to the Company. Such grant shall not be inconsistent or incompatible with the rights or privileges granted to the Company by this agreement.

"8. That all structures, buildings, pipe lines, machinery or facilities located on the demised premises at the expiration or earlier termination of the lease shall become and remain the property of the State upon the expiration or earlier termination of the lease.

"9. That the Company will on the last day of said term or sooner termination of this agreement, peaceably and quietly leave, surrender and yield up to the State, all and singular, the demised premises, including any and all buildings and other improvements thereon as provided in paragraph 8 hereof, in good order, condition and repair, reasonable use and wear thereof and damage by act of God or the elements excepted; and execute and deliver to State a good and sufficient quitclaim deed to the rights arising hereunder. Should Company fail or refuse to deliver to the State a quitclaim deed as aforesaid, a written notice by the State reciting the failure or refusal of the Company to execute and deliver said quitclaim deed as herein provided shall from the date of recordation of said notice be conclusive evidence against Company and all persons claiming under Company of the termination of this agreement.

"10. That all notices herein provided to be given shall be deemed to have been fully given when made in writing and deposited in the United States Mail, registered and postage prepaid, addressed as follows:

"To the State:

State Lands Commission
Room 301
California State Building
217 West First Street
Los Angeles 12, California

"To the Company:

Southern Pacific Company
65 Market Street
San Francisco 5, California

"The address to which the notices shall be mailed as aforesaid may be changed by written notice as herein provided; but nothing herein contained shall preclude the giving of any such notice by personal service.

"11. That time is the essence of each and all the terms and provisions of this agreement, and the terms and provisions of this agreement shall extend to and be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the respective parties hereto.

"12. If at the end of the term of this lease, the State shall desire to lease or otherwise dispose of said property, the State, so far as it legally may, shall afford the Company an opportunity to meet the terms of the highest bid or offer for such lease or other disposition, and in the event the Company does so,

it shall be deemed the highest bidder, except as may otherwise be required by law.

"13. This agreement may be terminated or the provisions changed, altered or amended by mutual consent of the parties.

"IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed the day and year first hereinabove written.

STATE OF CALIFORNIA
STATE LANDS COMMISSION

By _____
Executive Officer

SOUTHERN PACIFIC COMPANY

By _____
and

4. (UNITED STATES VS. CALIFORNIA, TIDELAND CONTROVERSY - W.O. 721) The Commission was informed that it had heretofore been furnished with copies of the Supreme Court Opinion in the case of United States vs. Texas and United States vs. Louisiana. In both of these opinions, the California decision was relied upon by the Supreme Court and it would appear that the opinion in these latter two cases are more severe than that against the State of California. The Commission will recall that the California decision stated State of California was not the owner of the submerged lands seaward of the low water mark along the coast of California and outside of inland waters. However, in the Texas and Louisiana cases the Supreme Court ordered that before September 15, 1950 the parties may submit the form of the decree - thus later the argument as to the precise location of the respective boundaries may be precipitated.

LEGISLATION:

On June 26, the House Rules Committee sent H.R. 8137 (introduced by Congressman Francis E. Walker, of Pennsylvania, Chairman of the subcommittee) to the floor. It is anticipated the House of Representatives will vote favorably on the bill soon after July 4th. Title II of this bill confirms and establishes the rights and claims of the forty-eight states, asserted and exercised by them throughout the Country's history, to the lands beneath navigable waters within State boundaries and to the resources within such lands and waters. Title III of the bill provides for the leasing by the United States of the lands in the continental shelf outside of State boundaries. Under this bill the State of California would receive all revenue from presently producing leases, since all of the presently leased lands are within the State's boundaries. Any development from the