

22. (ASSIGNMENT OF LEASE, LOT 12, FISH CANYON, P.R.C. 1144, WILLIAM F. COMMERFORD TO LOWELL N. THARP - W.O. 1043.) William F. Commerford, holder of Lease No. 1144, covering Lot 12 in the SE $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Section 16, T. 1 N., R. 10 W., S.B.M. (Fish Canyon), has requested the assignment of his lease to Lowell N. Tharp. Subject lease expires January 11, 1955. Filing fee has been paid.

UPON MOTION DULY MADE AND UNANIMOUSLY CARRIED A RESOLUTION WAS ADOPTED AUTHORIZING THE EXECUTIVE OFFICER TO APPROVE THE ASSIGNMENT OF LEASE P.R.C. 1144, COVERING LOT 12 IN THE SE $\frac{1}{4}$  OF THE SE $\frac{1}{4}$  OF SECTION 16, T. 1 N., R. 10 W., S.B.M. (FISH CANYON), BY WILLIAM F. COMMERFORD TO LOWELL N. THARP.

23. (DIVISION OF HIGHWAYS, ADDITIONAL WIDTH OF EXISTING RIGHT OF WAY ACROSS GUADALUPE CANAL, BAYSHORE HIGHWAY, SAN MATEO COUNTY - W.O. 411, P.R.C. 381.) The Division of Highways has requested approval of an additional 27.5 feet in width of the existing 130 foot wide right of way across Guadalupe Canal, San Mateo County. The additional width is required for temporary rerouting during construction of the new Bayshore Freeway. The added width requested is within that portion of Guadalupe Canal now under lease, No. P.R.C. 488, to the Crocker Estate Company, and is crossed by two easements issued to the County of San Mateo. An agreement has been signed between the Division of Highways and the Crocker Estate Company for the use of the added width by the Division of Highways. Two right-of-way easements issued August 17, 1934, to the County of San Mateo for a street and sewer line will be crossed by the added width.

UPON MOTION DULY MADE AND UNANIMOUSLY CARRIED A RESOLUTION WAS ADOPTED AUTHORIZING THE EXECUTIVE OFFICER TO APPROVE AN ADDED WIDTH OF 27.5 FEET TO THE PRESENT HIGHWAY RIGHT OF WAY ACROSS GUADALUPE CANAL UNDER P.R.C. 381, HIGHWAY ROUTE IV-SM-68-A, SUBJECT TO THE LEASE TO THE CROCKER ESTATE COMPANY WITH THE STATE THROUGH THE STATE LANDS COMMISSION, THE COMMISSION RETAINING THE COLLECTION OF ALL RENTS DUE UNDER THE PROVISIONS OF LEASE NO. P.R.C. 488 ISSUED TO THE CROCKER ESTATE COMPANY; SUBJECT TO THE AGREEMENT ENTERED INTO BETWEEN THE DIVISION OF HIGHWAYS AND THE CROCKER ESTATE COMPANY; AND SUBJECT TO TWO RIGHT-OF-WAY EASEMENTS ISSUED TO THE COUNTY OF SAN MATEO, DATED AUGUST 17, 1934.

24. (APPLICATION FOR LEASE OF TIDE AND SUBMERGED LANDS IN CONTRA COSTA COUNTY - AMERICAN SMELTING AND REFINING COMPANY - W.O. 282, P.R.C. 618.) The Commission was informed that an application has been received from the American Smelting and Refining Company, who have a metalliferous refinery known as the Selby Smelter near Crockett in Contra Costa County, to lease approximately 69.3 acres of tide and submerged lands for the purpose of dumping thereon slag and other waste materials from their operations, and removing same from time to time for the purpose of reworking; and also for the purpose of making any lawful use of the area, such as expanding their refining plant.

The occupancy of the area for which a lease is now requested has been under investigation commencing on October 24, 1944, at which time the American Smelting and Refining Company were advised of their use of the described lands without the authority of the State.

By further investigation it has been determined that the predecessor in interest of the American Smelting and Refining Company did have authority

from the County Board of Supervisors under the Harbors and Navigations Code for the building of a large wharf, such authority extending from May 1, 1882, to March 3, 1922. No authority for the maintenance of the wharf was obtained during the period March 3, 1922, until the present time. With the passage of the State Lands Act in 1938, jurisdiction over the lands was placed under the State Lands Commission. Additionally, over the years slag has been dumped onto the submerged land involved without any apparent authority of the State.

An independent appraisal has been made of the area to be leased in an unimproved status, and the aggregate appraised value is \$18,675.00 for the 69.3 acres.

Negotiations for a lease of the applied for lands have been going on ever since October 24, 1944, and now have culminated in some suggested modifications in the standard lease due to the unorthodox operations on the State lands. In addition there are reasons for certain policy deviations. These suggestions are as follows:

1. Consideration shall be the average of 6.5% rental of appraised value for a period of fifteen (15) years commencing on October 24, 1944. In addition to this consideration, the applicant has agreed that all slag deposits on the land at the termination of the lease shall belong to the State, but that during the term of the lease the slag shall retain its character as personalty, and remain the property of the lessee. The reason for the slag not belonging to the State at the time of first deposit is that the refining company may find it advantageous to rework some of it, and in certain operations it does mix slag with new ores being smelted. Thus the State will ultimately benefit from some filled-in tidelands having a higher value than they would as submerged lands.

2. The standard lease form has no provision for a Notice of Default. In this case the Lessee requests thirty days' notice of default, in order that remedy may be made within that period of time.

3. The standard lease form does not permit delay beyond the stated time in which to make improvements, whereas it is now suggested that the stated time may be extended in case of strikes, lockouts, labor disputes, failure of transportation, and Acts of God or matters beyond the control of the Lessee.

4. Under the standard lease form it is provided that the bond required shall be in force for 90 days beyond the lease term. The Lessee has requested that this be extended to 180 days, in order to give time for removal of any facilities placed on the lands.

5. The Lessee has requested that it be given a firm rental amount for the primary term of fifteen years, plus first, second, and third ten-year options of extension. It is reasonable that the primary term and the first ten-year extension be at the same rental rate because, since the lease is predated to 1944, the Lessee will already have lost six and one-half years for which rental will be paid upon execution of the lease. It is suggested that the State should not bind itself at this time to the same rental for the second and third ten-year options to extend, but that such rental be determined by the State at the time of the exercising of the options to renew.

As stated above, there is a good size wharf existing on the area, and additional structures are contemplated under the lease. It has been estimated that it might cost the State as much as \$75,000 to remove this wharf in case of default.

The proposed lease has the approval of the Attorney General's Office as to form.

UPON MOTION DULY MADE AND UNANIMOUSLY CARRIED A RESOLUTION WAS ADOPTED AUTHORIZING THE EXECUTIVE OFFICER TO ISSUE TO THE AMERICAN SMELTING AND REFINING COMPANY A LEASE COVERING 69.3 ACRES OF TIDE AND SUBMERGED LANDS ADJACENT TO THE SELBY SMELTER IN CONTRA COSTA COUNTY, AT THE ANNUAL RENTAL OF \$1,067.55, WITH PAYMENT AT THE TIME OF EXECUTION OF THE LEASE OF THE SUM OF \$8,540.00, COVERING THE PERIOD FROM THE DATE THE LEASE IS TO BECOME EFFECTIVE, NAMELY OCTOBER 24, 1944, TO OCTOBER 23, 1961; THAT TITLE TO THE SLAG DEPOSITED ON THE LANDS SHALL VEST IN THE STATE UPON TERMINATION OF THE LEASE; THAT THE LEASE PROVIDE FOR 30 DAYS' NOTICE OF DEFAULT FROM THE STATE; THAT THE TIME FOR COMPLETION OF IMPROVEMENTS SHALL BE EXTENDED BEYOND THE THREE YEARS FROM DATE IN CASE OF DELAYS CAUSED BY MATTERS BEYOND THE CONTROL OF THE LESSEE; THAT THE BOND REQUIRED BY THE LEASE BE SET AT \$75,000.00, WITH AN OPTION IN THE LESSEE TO DEPOSIT IN LIEU THEREOF ITS PERSONAL BONDS SECURED BY U. S. TREASURY BEARER BONDS, WHICH SHALL BE DEPOSITED WITH THE STATE TREASURER, SUBJECT TO INSTRUCTIONS OF THE COMMISSION; THAT THE LESSEE BE GIVEN THE LEASE FOR A PERIOD OF FIFTEEN YEARS FROM OCTOBER 24, 1944, AND FOR THE FIRST TEN-YEAR RENEWAL PERIOD, AT THE FIXED RENTAL ABOVE STATED, AND THAT THE LESSEE BE GIVEN THE OPTION TO RENEW FOR TWO ADDITIONAL PERIODS OF TEN-YEARS EACH UPON SUCH REASONABLE TERMS AND CONDITIONS AS THE STATE OR ANY SUCCESSOR IN INTEREST THERETO MIGHT IMPOSE.

25. (DIVISION OF HIGHWAYS, REQUEST FOR APPROVAL OF RIGHT OF WAY, MODOC COUNTY - W.O. 411, P.R.C. 819.) The Division of Highways has requested approval of a right of way for highway purposes across the south half of Section 36, T. 44 N., R. 13 E., M.D.M., Modoc County. The proposed right of way is 2966 feet in length and approximately 125 feet to 250 feet in varying width, adjacent to the Southern Pacific Company railway right of way. Section 6210.3 (1st) Public Resources Code provides that the Commission may grant easements and rights of way to the Department of Public Works to or over any of the public lands of the State for the purpose of rights of way for highways.

UPON MOTION DULY MADE AND UNANIMOUSLY CARRIED A RESOLUTION WAS ADOPTED AUTHORIZING THE EXECUTIVE OFFICER TO APPROVE A RIGHT OF WAY 2966 FEET IN LENGTH AND 125 FEET TO 250 FEET IN VARYING WIDTH ACROSS THE SOUTH HALF OF SECTION 36, T. 44 N., R. 13 E., M.D.M., MODOC COUNTY, ADJACENT TO THE SOUTHERN PACIFIC COMPANY RAILWAY RIGHT OF WAY, SUCH RIGHT OF WAY TO BE USED BY THE STATE DIVISION OF HIGHWAYS FOR THE CONSTRUCTION OF A HIGHWAY, PURSUANT TO SECTION 6210.3 (1st) OF THE PUBLIC RESOURCES CODE, NO FEE AND NO RENTAL TO BE REQUIRED.

26. (APPLICATION FOR SUSPENSION OF PRODUCTION REQUIREMENTS, LEASES NOS. P.R.C. 273 AND P.R.C. 356, KAISER ALUMINUM AND CHEMICAL CORPORATION, OWENS LAKE.) The Commission was informed that on July 6, 1950 (Minute Page 1155, Item 51), it authorized the suspension of requirements for the production of minerals from Leases Nos. P.R.C. 273 and P.R.C. 356 for two years each (lease years 1949, 1950), provided that the Lessee pay to the State, on a