

MINUTE ITEM

31. TIMBER TRESPASS - FIRCO, INCORPORATED - S.W.O. 7092.

After consideration of Calendar Item 27 attached, and upon motion duly made and unanimously carried, the following resolution was adopted:

THE COMMISSION APPROVES A COMPROMISE SETTLEMENT WITH FIRCO, INCORPORATED, OF MENCOCINO COUNTY, CALIFORNIA, THE STATE TO RECEIVE \$5,000 AS FULL PAYMENT FOR DAMAGES OCCURRING BY REASON OF A TIMBER TRESPASS BY THE CORPORATION ON STATE LAND UNDER THE JURISDICTION OF THE COMMISSION, DESCRIBED AS THE SW $\frac{1}{4}$  OF SW $\frac{1}{4}$  OF SECTION 33, T. 23 N., R. 14 W., M.D.M.; FURTHER, THE EXECUTIVE OFFICER IS AUTHORIZED TO EXECUTE AN AGREEMENT, SUBJECT TO APPROVAL BY THE ATTORNEY GENERAL'S OFFICE, FOR THE PURPOSE OF RELEASING FIRCO, INCORPORATED, FROM ANY CLAIM FOR DAMAGES OCCURRING AS THE RESULT OF THE AFORESAID TRESPASS, UPON PAYMENT BY FIRCO, INCORPORATED, TO THE STATE OF CALIFORNIA OF THE AFORESTATED AMOUNT. ANY PAYMENT RECEIVED UNDER SAID SETTLEMENT IS TO BE DEPOSITED AS FOLLOWS: IN THE SCHOOL LAND FUND \$4560 AS SETTLEMENT FOR DAMAGES; IN THE STATE LANDS ACT FUND, CREDITED TO THE DIVISION'S CURRENT APPROPRIATION FOR SUPPORT, \$440, AS REIMBURSEMENT FOR INVESTIGATORY COSTS.

Attachment

Calendar Item 27 (3 pages)

CALENDAR ITEM

27.

(TIMBER TRESPASS - FIRCO, INCORPORATED - S.W.O. 7092.)

At the time appraisal was made in connection with State Indemnity Selection Application No. 5058 (S.W.O. 5855), a timber trespass was noted on the land embraced therein, described as the SW $\frac{1}{4}$  of SW $\frac{1}{4}$  of Section 33, T. 23 N., R. 14 W., M.D.M. The land was listed (conveyed) to the State under the above-mentioned selection application on March 19, 1958. A complete investigation of the trespass has been made by the appraisal staff, and the following facts have been developed:

Timber removed:	193.080 M.B.F. of Douglas Fir	
	<u>4.64</u> M.B.F. of Ponderosa Pine	
Total:	197.72 M.B.F. of merchantable timber	
	at \$15 average per M.	\$2,965.80
Logging damage (road construction, skidding and erosion)		300.00
Detraction of salability of remaining land		<u>500.00</u>
		\$3,765.80
Double indemnity feature of Civil Code, Section 3346		
	\$3,765.80 x 2 =	\$7,531.60
Expenses involved in investigating trespass		<u>440.00</u>
	Total	\$7,971.60

This trespass involves approximately the westerly 24 acres of the 40-acre tract above described. The trespasser is Firco, Incorporated, of Mendocino County, California, which was cutting timber on the private property which adjoins State-owned land. An agent of the Corporation (who is not a licensed surveyor), established a cutting line some 11.91 chains east of its proper location by apparent misuse of a retracement survey and by failure to consider an offset that exists between T. 23 N. and T. 22 N. The trespass resulted.

Section 3346 of the Civil Code provides that for wrongful injuries to timber, trees or underwood upon the land of another, or removal thereof, the measure of damages is three times such sum as would compensate for the actual detriment, except, that where the trespass was casual or involuntary or that the defendant in any action brought under this Section had probable cause to believe that the land on which the trespass was committed was his own or the land of the person in whose service or by whose direction the act was done, the measure of damages shall be twice the sum as would compensate for the actual detriment. The Section further provides that the measure of damages to be assessed against a defendant for any trespass committed while acting in reliance upon a survey of boundary lines which improperly fixes the location of a boundary line shall be the actual detriment incurred if (1) the trespass was committed by a defendant who either himself procured, or whose principal, lessor, or immediate predecessor in title procured the survey to

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be made and (2) the survey was made by a person licensed under the laws of this State to practice land surveying.

On the basis of a staff investigation, the following appear to be the facts: (1) No willful trespass was involved. (2) The trespass occurred as a result of an informal survey conducted by an unlicensed surveyor. Under these circumstances and after review with the Attorney General's office it was concluded that the State was probably entitled to double indemnity.

Based upon the original United States plats of survey for this entire area, the property lines cannot be identified precisely without a very thorough and complete survey by the State, the cost of which, it is estimated, would exceed \$6,000. For the purpose of negotiating a possible settlement, general agreement was reached between representatives of the State and of Firco, Incorporated as to the approximate location of the west line of Section 33, which is the common boundary between the State land and the private land to the west. Both Firco, Incorporated and the State are well aware of the survey problems in this area, including the cost involved if the matter were to be settled by litigation, which would of necessity require a complete and comprehensive survey. To eliminate costly litigation and surveying, negotiations have been conducted by the staff in an attempt to reach an equitable settlement.

In addition to the timber removed, the State suffered damage in that approximately one-half mile of roadway was constructed, covering approximately 2.5 acres of State land within the area of the timber trespass.

By letter dated December 2, 1958, the claim of the State in the amount of \$7,971.60 was submitted to the trespasser. This resulted in the submission of a written counter offer from Firco, Incorporated, under date of January 15, 1959, offering the State \$5,000 as a compromise settlement.

In consideration of the circumstances outlined above, including the cost of survey to identify precisely property lines on the ground and the costs involved if litigation were to result, the counter offer of \$5,000 appears reasonable. This figure is in excess of actual damages, the figure for which has been established at \$3,765.80. It is likewise recognized that this amount is below the \$7,971.60 figure established under the double indemnity feature of Section 3346 of the Civil Code.

IT IS RECOMMENDED THAT THE COMMISSION APPROVE A COMPROMISE SETTLEMENT WITH FIRCO, INCORPORATED OF MENDOCINO COUNTY, CALIFORNIA, THE STATE TO RECEIVE \$5,000 AS FULL PAYMENT FOR DAMAGES OCCURRING BY REASON OF A TIMBER TRESPASS BY THE CORPORATION ON STATE LAND UNDER THE JURISDICTION OF THE COMMISSION, DESCRIBED AS THE SW $\frac{1}{4}$  OF SW $\frac{1}{4}$  OF SECTION 33, T. 23 N., R.14 W., M.D.M.; IT IS FURTHER RECOMMENDED THAT THE COMMISSION AUTHORIZE THE EXECUTIVE OFFICER TO EXECUTE AN AGREEMENT, SUBJECT TO APPROVAL BY THE ATTORNEY GENERAL'S OFFICE, FOR THE PURPOSE OF RELEASING FIRCO, INCORPORATED FROM ANY CLAIM FOR DAMAGES OCCURRING AS THE RESULT OF THE AFORESAID TRESPASS, UPON PAYMENT BY FIRCO, INCORPORATED TO THE STATE OF CALIFORNIA OF THE

CALENDAR ITEM 27. (CONT'D)

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