

~~MINUTE ITEM~~

35. APPROVAL OF STIPULATION FOR JUDGMENT IN QUIET-TITLE ACTION, "SCHULTZ ET AL. VS. STATE", SUPERIOR COURT FOR MARIN COUNTY, CASE NO. 30985 - W.O. 503.331, GEN. DATA-LITIGATION.

After consideration of Calendar Item 28 attached, and upon motion duly made and unanimously carried, the following resolution was adopted:

THE EXECUTIVE OFFICER IS AUTHORIZED TO EXECUTE THE APPROVAL OF THE STIPULATION FOR JUDGMENT PROPOSED FOR SETTLEMENT OF THE "SCHULTZ VS. STATE" QUIET-TITLE ACTION IN THE SUPERIOR COURT IN AND FOR THE COUNTY OF MARIN, NO. 30985, IN THE FORM SET FORTH IN EXHIBIT "A" ATTACHED HERETO.

Attachment

Calendar Item 28 (2 pages)

CALENDAR ITEM

28.

APPROVAL OF STIPULATION FOR JUDGMENT IN QUIET-TITLE ACTION, "SCHULTZ ET AL. VS. STATE", SUPERIOR COURT FOR MARIN COUNTY, CASE NO. 30985 - W.C. 503.331.

After extensive negotiation by the staff between 1948 and 1958 on a proposed realignment of the course of Corte Madera Creek and Canal, an exchange was consummated with the Schultz Construction Company whereby the State relinquished a portion of the natural bed of Corte Madera Creek and adjacent areas within the Canal lines through a State patent dated December 19, 1958, as authorized by Chapter 18 of the Statutes of 1952, amended by Chapter 17 of the Statutes of 1957. The patent contained a reservation in favor of the people of the State to fish upon the land, as required by Section 25 of Article 1 of the Constitution of the State. The parcel of land which the State acquired from Schultz Construction Company for the new alignment of Corte Madera Canal must, pursuant to statute, be administered as sovereign lands of the State, and is subject to the public right to fish as well as other constitutional trusts relative to sovereign lands. The subject quiet-title action was instituted because the plaintiffs felt that the encumbrance upon the patented land of the public right to fish therefrom constitutes an encumbrance which was not contemplated under the exchange. The quiet-title action sought to eliminate the effects of the constitutional reservation. After a complete examination of the legal problems involved in eliminating the public right to fish, the plaintiffs are willing to accede to the constitutional requirement if a judgment can be obtained in their favor as to all other interest in the land.

The office of the Attorney General has approved the form of Stipulation for Judgment, as set forth in Exhibit "A" attached hereto. The plaintiffs have asked that the Commission indicate its approval of the Stipulation for Judgment.

IT IS RECOMMENDED THAT THE COMMISSION AUTHORIZE THE EXECUTIVE OFFICER TO EXECUTE THE APPROVAL OF THE STIPULATION FOR JUDGMENT PROPOSED FOR SETTLEMENT OF THE "SCHULTZ VS. STATE" QUIET-TITLE ACTION IN THE SUPERIOR COURT IN AND FOR THE COUNTY OF MARIN, NO. 30985, IN THE FORM SET FORTH IN EXHIBIT "A" ATTACHED HERETO.

Attachment  
Exhibit "A"

EXHIBIT "A"

IT IS HEREBY STIPULATED by and between the parties hereto and through their respective attorneys, as follows:

1. That all of the allegations of plaintiffs' complaint on file herein are true and correct except that by Deed of Patent dated December 19, 1958, from defendant to plaintiff Schultz Construction Co., and under which plaintiffs claim title to the real property described in the complaint herein, which Deed of Patent was recorded on December 24, 1958, in Book 1244 of Official Records, at page 117, in the Office of the County Recorder of Marin County, State of California, defendant reserved to the People of the State of California "the absolute right to fish thereupon as provided in Section 25 of Article I of the Constitution of the State of California."
2. That the above-entitled Court may enter judgment forthwith, without notice, quieting the title of the plaintiff to the real property described in the complaint herein, subject to the right of the People of the State of California to fish thereupon as provided by Section 25 of Article I of the Constitution of the State of California; that said judgment may be made without the making or filing of findings of fact or conclusions of law and the respective parties hereby waive notice of said judgment and costs.