

MINUTE ITEM

32. PROPOSED LEGISLATIVE PROGRAM - W.O. 3300.2.

After consideration of Calendar Item 34 attached, and upon motion duly made and unanimously carried, the following resolution was adopted:

THE EXECUTIVE OFFICER IS AUTHORIZED TO SUBMIT PROPOSED LEGISLATION FOR CONSIDERATION DURING THE 1961 SESSION OF THE LEGISLATURE TO PROVIDE FOR AMENDMENT OF SECTIONS 6223, 6303, 6357, 6816(a), 6893, AND 6898 OF THE PUBLIC RESOURCES CODE, WITH THE FORM OF LEGISLATION TO BE DRAFTED BY THE OFFICE OF THE LEGISLATIVE COUNSEL, TO ACCOMPLISH THE PURPOSES DETAILED IN EXHIBITS "A" THROUGH "F" ATTACHED.

Attachment

Calendar Item 34 (9 pages)

CALENDAR ITEM

34.

PROPOSED LEGISLATIVE PROGRAM - W.O. 3300.2.

It is proposed that the following sections of the Public Resources Code be amended, as detailed in the legislative bill format attached as Exhibits "A", "B", "C", "D", "E", and "F", for the reasons outlined in the following discussion:

- (1) Section 6223. It is proposed that this section be amended to provide that applications for purchase or lease of State lands will be given the priority of time of filing except where an application is filed by a county, city, district, political subdivision, or agency or officer of the State, and in those instances the application filed by one of the latter entities shall have priority. Where more than one of the above-named public entities files an application on the same parcel, priorities would be established according to the time of filing of the respective applications.
- (2) Section 6303. Amendment of this code section is proposed in order to overcome the confusion that arises when a public body seeks to improve navigation in a harbor or in a bay granted to it by the Legislature. The second paragraph of the section authorizes the State Lands Commission to issue permits to take sand and gravel and other spoils without a royalty payment for removal only from "navigable streams". This raises the question as to what authority the Commission has in respect to a "bay or inlet".

Paragraph 1 of the section uses words such as "swamp", "overflowed", "marsh", and "tide or submerged" lands owned by the State, but does not mention "navigable streams". At present it is not known whether these words were omitted intentionally. This section was enacted piecemeal, and the Legislature probably intended to include the same types of lands in both paragraphs of this section. The first paragraph, as it now reads, limits the removal of material for the erection of structures such as groins, jetties, sea walls, etc.; but Paragraph 2 implies discretionary authority in the Commission to extract material for the improvement of navigation.

There is also a question as to whether the granting of permits under this section must be pursuant to competitive bidding procedures specified under Sections 6900 and 6992. This becomes a troublesome problem when there is a public body involved which feels that it should not have to engage in competitive bidding with private individuals for a removal authorization. Many times the materials to be extracted are usable only by the littoral owner who, because of his ability to use the material, will undertake to enter into a contract to dredge the area.

In order to resolve these problems, an amendment has been drafted adding words such as "beds of navigable streams" etc. to the type of lands

CALENDAR ITEM 34. (CONTD.)

involved; also, the purposes for which the privilege of depositing or extracting material may be conducted, have been enlarged; i.e., "for improvement of navigation, reclamation, and flood control" as well as for the "erection and maintenance of structures". In Paragraph 2, the words "tide and submerged lands, streams, rivers, creeks, bays, inlets, and beds of navigable channels" have been added so that the same type of lands is involved in both paragraphs. The purposes also have been enlarged, by adding the words "reclamation or flood control".

Since the Commission's present policy does not permit extraction of materials without the payment of a royalty, the clause "without paying a royalty therefor" has been eliminated from the second paragraph of the statute. In lieu thereof, language has been added to allow the Commission to grant a permit "upon such terms and conditions as will be in the best interests of the State notwithstanding the provisions of Section 6900 and Section 6992 in respect to competitive bidding". This will allow the Commission to disregard competitive bidding when the materials are of little commercial value, if any, and are being removed only for the basic purpose of improving navigation, reclamation, or flood control.

- (3) Section 6357. It is suggested that the word "agreement" be added to this section so that there will be no question but that the Commission has authority to establish the Ordinary High Water Mark, etc., either by agreement, or arbitration, or action to quiet title, whenever this is deemed expedient or necessary. Although there appears to be little doubt that the Commission now has implied authority under this section to establish the Ordinary High Water Mark or Low Water Mark by agreement, it appears desirable to clarify the language to eliminate any doubt whatever.
- (4) Section 6816(a). It is suggested that this section be amended to limit the time within which a claim for refund must be submitted to the Commission. At the present time the Code provides only for the payment of refunds as authorized by the Commission and approved by the State Board of Control. It is suggested that language be added to require that any claim for refund under this section shall be presented to the Commission within four years after the claim first arises or accrues. (A claim of this type must be submitted to the Board of Control within two years; however, under the Civil Code relating to this type of claim, the statute of limitations is four years.)
- (5) Section 6893. An increasing number of problems are developing between owners of school lands patented by the State and individuals who wish to extract the minerals reserved to the State in those patents. This section presently grants a priority to the surface owner of such lands. The wording, if read literally, gives the owner a priority for a prospecting permit or lease; however, a reading of the other sections of the Public Resources Code indicate that the owner of the surface is intended to have a priority only for a

CALENDAR ITEM 34. (CONFD.)

prospecting permit and that, if it is determined that the land contains commercially valuable minerals, he must bid for a lease against other bidders. As long as the words "or lease" are included in Section 6893, possibilities of litigation and administrative difficulties will continue. Therefore, it is proposed that the words "or lease" be stricken from Section 6893.

- (6) Section 6898. The present wording of the section makes it mandatory that every lease for the extraction of minerals shall be for a term of twenty years. This may be an unwarranted restriction on the discretion of the Commission since, in many instances, it could be to the best interests of the State to limit the initial term to five years, or even less.

It is proposed to change the wording in this section to provide that leases cannot exceed an initial term of twenty years. This would accomplish the objective of limiting the maximum term while still giving the Commission discretion to specify a shorter term if such is desired in the State's interest. It is also proposed to amend the section to authorize renewals for periods not to exceed ten years each, again at the discretion of the Commission.

IT IS RECOMMENDED THAT THE COMMISSION AUTHORIZE THE EXECUTIVE OFFICER TO SUBMIT PROPOSED LEGISLATION FOR CONSIDERATION DURING THE 1961 SESSION OF THE LEGISLATURE TO PROVIDE FOR AMENDMENT OF SECTIONS 6223, 6303, 6357, 6816(a), 6893, AND 6898 OF THE PUBLIC RESOURCES CODE, WITH THE FORM OF LEGISLATION TO BE DRAFTED BY THE OFFICE OF THE LEGISLATIVE COUNSEL, TO ACCOMPLISH THE PURPOSES DETAILED IN EXHIBITS "A" THROUGH "F" ATTACHED.

Attachments

Exhibits "A" through "F"

EXHIBIT "A"

An act to amend Section 6223 of the Public Resources Code, relating to State lands.

The people of the State of California do enact as follows:

Section 1. Section 6223 of the Public Resources Code is amended to read:

6223. Applications for purchase, or lease of state lands shall be given the priority of time of filing, except that applications filed by any county, city, district, political subdivision, agency or officer of the State shall have priority over all other applications regardless of time of filing.

Priorities between cities, counties, districts, political subdivisions, agencies or officers of the State shall be established by the time of filing of their respective applications.



EXHIBIT "B"

An act to amend Section 6303 of the Public Resources Code, relating to State lands.

The people of the State of California do enact as follows:

Section 1. Section 6303 of the Public Resources Code is amended to read:

6303. The commission may grant the privilege of depositing material upon or removing or extracting material from ~~swamp, overflowed,~~ marsh, tide or submerged lands, beds of navigable streams, channels, rivers, creeks, bays or inlets owned by the State, for improvement of navigation, reclamation, flood control or, for purposes connected with the erection or maintenance of structures authorized under Articles Article 2 ~~or~~ 3 of this chapter, upon such terms and conditions and for such consideration as will be for the best interests of this State.

When a contractor or permittee has a contract with or a permit from the Federal Government or any authorized public agency to dredge navigable streams swamp, overflowed, marsh, tide or submerged lands, beds of navigable streams, channels, rivers, creeks, bays, or inlets for the improvement of navigation, reclamation, or flood control, the commission may when in the best interests of the State, allow such contractor or permittee to have sand, gravel, or other spoils dredged from the sovereign lands of the State located within the areas specified in such contract or permit without paying a royalty therefor upon such terms and conditions and for such consideration as will be in the best interests of the State notwithstanding the provisions of Section 6901 and Section 6992 in respect to competitive bidding. The amounts of sand, gravel or other spoils so removed from sovereign lands shall not exceed those specified in the contract or permit.

EXHIBIT "C"

An act to amend Section 6357 of the Public Resources Code, relating to State lands.

The people of the State of California do enact as follows:

Section 1. Section 6357 of the Public Resources Code is amended to read:

Section 6357. The commission may establish the ordinary high-water mark or the ordinary low-water mark of any of the swamp, overflowed, marsh, tide, or submerged lands of this State, either by agreement, arbitration or action to quiet title, whenever it is deemed expedient or necessary

EXHIBIT "D"

An act to amend Section 6816(a) of the Public Resources Code, relating to State lands.

The people of the State of California do enact as follows:

Section 1. Section 6816(a) of the Public Resources Code is amended to read:

Section 6816(a). For the payment of refunds, as authorized by the commission and approved by the State Board of Control. Claims for refunds shall be presented to the commission within four years after the claim first arose or accrued.



EXHIBIT "E"

An act to amend Section 6893 of the Public Resources Code, relating to State lands.

The people of the State of California do enact as follows:

Section 1. Section 6893 of the Public Resources Code is amended to read:

6893. In case of an application for a prospecting permit or lease covering mineral deposits reserved to the State ~~in lands sold by the State subject to such reservation by~~ anyone other than the owner of such lands, the owner shall have six months within which to file an application for a prospecting permit or lease, but if the owner fails to comply with the requirements of this chapter ~~and the rules and regulations made~~ in pursuance hereof, his preferential rights shall thereupon cease and terminate, and the original applicant shall be permitted to proceed with his application.

EXHIBIT "F"

An act to amend Section 6898 of the Public Resources Code, relating to State lands.

The people of the State of California do enact as follows:

Section 1. Section 6898 of the Public Resources Code is amended to read:

6898. Leases under this article shall be for terms of not to exceed 20 years with the preferential right in the lessee to renew the lease for successive periods of not to exceed 10 years upon such reasonable terms and conditions as may be prescribed by the commission.