

MINUTE ITEM

5. EXCHANGE OF LAND, ALAMEDA COUNTY, BETWEEN STATE OF CALIFORNIA AND LESLIE SALT CO. -W.O. 1260, S.W.O. 7067. (ALAMEDA COUNTY FLOOD CONTROL CHANNEL)

During consideration of Calendar Item 4 attached, the Executive Officer reported that the resolution should be corrected to read as is hereafter set forth in the resolution adopted:

UPON MOTION DULY MADE AND UNANIMOUSLY CARRIED THE FOLLOWING RESOLUTION WAS ADOPTED:

THE COMMISSION READOPTS ITS RESOLUTION OF MARCH 25, 1959, IDENTIFIED AS MINUTE ITEM 28, PAGES 4681-94, AND

1. AUTHORIZES THE EXECUTIVE OFFICER TO DELETE FROM THE FORM OF PATENT PREVIOUSLY AUTHORIZED TO BE ISSUED TO LESLIE SALT CO. THE RESERVATION OF PUBLIC FISHING RIGHTS IN ACCORDANCE WITH THE INFORMAL OPINION OF THE OFFICE OF THE ATTORNEY GENERAL DATED NOVEMBER 13, 1962;
2. MODIFIES THE FORM OF DEED PREVIOUSLY AUTHORIZED TO BE ACCEPTED BY THE EXECUTIVE OFFICER FROM LESLIE SALT CO., KNOWN AS EXHIBIT B, BY ADDING THE FOLLOWING CLAUSE THERETO:

"PROVIDES, HOWEVER, THAT THE EXERCISE OF ANY RIGHTS HEREUNDER SHALL NOT INTERFERE WITH THE PRIMARY USE OF THE PROPERTY AS A WATER COURSE, FLOOD CONTROL CHANNEL, OR FLOOD CONTROL AND WATER CONSERVATION CHANNEL BY THE STATE, ITS SUCCESSORS, ASSIGNS, LICENSEES, PERMITTEES, OR AGENTS."

Attachment
Calendar Item 4 (2 pages)

CALENDAR ITEM

4.

EXCHANGE OF LAND, ALAMEDA COUNTY, BETWEEN STATE OF CALIFORNIA AND LESLIE SALT CO. - W.O. 1260. (ALAMEDA COUNTY FLOOD CONTROL CHANNEL.)

On March 25, 1959 (Minute Item 28, pages 4681 through 4694), the Commission authorized an exchange of lands between the State of California and the Leslie Salt Company, pursuant to Chapter 353, Statutes of 1955 and to Public Resources Code Section 6307. Following the authorization a question was raised as to the specification in the patent of a reservation of the right to fish, as provided by Section 25 of Article 1 of the Constitution.

An informal opinion of the office of the Attorney General dated November 13, 1962, concludes:

"1. Reservation of fishing rights in the state is not required under Article I, section 25 of the California Constitution in the exchange of lands between the state and Leslie Salt Company for the realignment of the Alameda Flood Control Channel, Statutes of 1955, chapter 353, page 3128.

a) To the extent the patents to the old Alameda Creek bed held by Leslie Salt Company were tidelands in the literal sense and subject to the public trust for commerce, navigation and fishing, the lifting of such trust by the enabling statute vests absolute title in Leslie Salt Company and is not such a 'transfer' or 'sale' as to be within the constitutional restriction.

b) To the extent that submerged lands were included within the patent descriptions, the decisions indicate that the patentees may not have acquired title at all. Where, however, the legislature has expressly lifted the public trust as to such lands, it can further authorize the absolute conveyance of them, having substituted new and better lands for the over-all public purposes of commerce, navigation and fishery, including those of flood control and fishing rights."

IT IS RECOMMENDED THAT THE COMMISSION READOPT ITS RESOLUTION OF MARCH 25, 1959, IDENTIFIED AS MINUTE ITEM 28, PAGES 4681-94, AND:

1. AUTHORIZE THE EXECUTIVE OFFICER TO DELETE FROM THE FORM OF PATENT PREVIOUSLY AUTHORIZED TO BE ISSUED TO LESLIE SALT CO. THE RESERVATION OF PUBLIC FISHING RIGHTS IN ACCORDANCE WITH THE INFORMAL OPINION OF THE OFFICE OF THE ATTORNEY GENERAL DATED NOVEMBER 13, 1962.
2. MODIFY THE FORM OF DEED PREVIOUSLY AUTHORIZED TO BE ACCEPTED BY THE EXECUTIVE OFFICER FROM LESLIE SALT CO., KNOWN AS EXHIBIT "B", BY ADDING THE FOLLOWING CLAUSE THERETO:

CALENDAR ITEM 4. (CONTD.)

"PROVIDED, HOWEVER, THAT THE EXERCISE OF ANY RIGHTS HEREUNDER SHALL NOT INTERFERE WITH THE PRIMARY USE OF THE PROPERTY AS A WATER COURSE, FLOOD CONTROL CHANNEL, OR FLOOD CONTROL AND WATER CONSERVATION CHANNEL BY THE STATE, ITS SUCCESSORS, ASSIGNS, LICENSEES, PERMITTEES OR AGENTS."