

MINUTE ITEM

29. PROPOSED COMPROMISE AND SETTLEMENT IN THE MATTER OF DONALD M. KOFOID AND MARY K. KOFOID VS. STATE OF CALIFORNIA, WESTERN TITLE INSURANCE AND GUARANTEE COMPANY, ET AL.; AN ACTION TO QUIET TITLE, FOR DECLARATORY RELIEF, AND FOR DAMAGES; SONOMA COUNTY SUPERIOR COURT CASE NO. 49442 - W.O. 503.414D, GEN. DATA.

After consideration of Calendar Item 23 attached, and upon motion duly made and unanimously carried, the following resolution was adopted:

THE EXECUTIVE OFFICER IS AUTHORIZED TO INFORM THE OFFICE OF THE ATTORNEY GENERAL THAT THE PROPOSED OFFER OF SETTLEMENT PROVIDING FOR PAYMENT OF \$1,000 FOR CONSIDERATION OF QUIETING TITLE TO THE DISPUTED AREA, MADE BY THE PLAINTIFF ON MAY 27, 1963, IN THE MATTER OF DONALD M. KOFOID AND MARY K. KOFOID VS. STATE OF CALIFORNIA, WESTERN TITLE INSURANCE AND GUARANTEE COMPANY, ET AL., SONOMA COUNTY SUPERIOR COURT CASE NO. 49442, IS ACCEPTABLE, AND THAT NECESSARY STEPS BE TAKEN TO EFFECT SETTLEMENT OF THE LITIGATION.

Attachment

Calendar Item 23 (2 pages)

CALENDAR ITEM

23.

PROPOSED COMPROMISE AND SETTLEMENT IN THE MATTER OF DONALD M. KOFOID AND MARY K. KOFOID VS. STATE OF CALIFORNIA, WESTERN TITLE INSURANCE AND GUARANTEE COMPANY, ET AL; AN ACTION TO QUIET TITLE, FOR DECLARATORY RELIEF, AND FOR DAMAGES; SONOMA COUNTY SUPERIOR COURT CASE NO. 49442 - W.O. 503.414.

Donald M. Kofoid is presently a lessee of certain tide and submerged lands along the left bank of Petaluma Creek next to the Black Point Bridge in Sonoma County under a lease issued on August 15, 1956 (P.R.C. 1767.9). The lease was issued on the basis that the State boundary was at a line established by a survey referred to as the 1951 Survey (W.O. 200). This survey which was then in preliminary status depicted the State boundary as being the mean high tide line as it existed in 1951; however, it failed to take into consideration boundary influences resulting from artificial forces created by construction of levees on Petaluma Creek. Since this survey was only preliminary, it was never recorded; however, copies of it were furnished to Mr. Kofoid, to his engineers, Wilsey and Ham, and to the Sonoma County Abstract Bureau, affiliated with Western Title Insurance and Guarantee Company for information.

Mr. Kofoid acquired from S. K. Herzog, Inc., certain uplands fronting on Petaluma Creek in the area involved, on the assumption that the 1951 Survey depicted the State boundary. Title insurance was issued by the codefendant, Western Title Insurance Company.

In 1960, another survey (W.O. 2093) established the boundary of State lands in the particular area as being at the ordinary high water mark of 1860. This survey was approved by the State Lands Commission and has been recorded.

Pursuant to the lease issued to Mr. Kofoid in 1956, he proceeded to develop a small-boat harbor on the land leased from the State and on land which he had purchased from S. K. Herzog, Inc. He expended considerable money and made substantial improvements on this land in reliance on the 1951 Survey. On or about December 15, 1961, he made an application to continue dredging on the northeasterly bank of Petaluma Creek, and indicated in the application that the boundary of his land was based on the 1951 Survey. He was informed that the 1951 Survey was only preliminary and that the 1960 Survey depicts the true boundary. After numerous conferences to settle the question of the boundary, the plaintiff filed an action to quiet title, for declaratory relief, and for damages. Since the filing of the action, the office of the Attorney General and the staff have conferred with the parties in the action and their attorneys.

On May 27, 1963, the plaintiff offered a thousand dollars in settlement and compromise of the litigation. In a stipulation proposed, the State would claim that the true boundary is the line depicted on the 1960 Survey; but, because of the prior (preliminary) survey by the State and Mr. Kofoid's reliance thereon, the State is estopped to assert that the 1960 line is the true boundary in this particular case. It is not anticipated that the settlement and compromise in this case will affect the boundary on the other

CALENDAR ITEM 23. (CONTD.)

reaches of Petaluma Creek since, as far as can be determined, no similar reliances on the 1951 Survey were made by anyone other than Kofoid.

The office of the Attorney General has recommended that the plaintiff's offer of compromise and settlement be accepted.

IT IS RECOMMENDED THAT THE COMMISSION AUTHORIZE THE EXECUTIVE OFFICER TO INFORM THE OFFICE OF THE ATTORNEY GENERAL THAT THE PROPOSED OFFER OF SETTLEMENT PROVIDING FOR PAYMENT OF \$1,000 FOR CONSIDERATION OF QUIETING TITLE TO THE DISPUTED AREA, MADE BY THE PLAINTIFF ON MAY 27, 1963, IN THE MATTER OF DONALD M. KOFOID AND MARY K. KOFOID VS. STATE OF CALIFORNIA, WESTERN TITLE INSURANCE AND GUARANTEE COMPANY, ET AL., SONOMA COUNTY SUPERIOR COURT CASE NO. 49442, IS ACCEPTABLE, AND THAT NECESSARY STEPS BE TAKEN TO EFFECT SETTLEMENT OF THE LITIGATION.