

MINUTE ITEM

7/26/71
FDU

28. AUTHORIZATION FOR ONE-MONTH CONTINUATION OF LEASE PRC 4539.9; AUTHORIZATION FOR EXECUTIVE OFFICER TO AMEND LEASE 4539.9 TO BE IN THE NAME OF THE SOLE OWNER OF THE VESSEL "SS LA JENELLE" AT SUCH TIME AS THE SOLE OWNER IS DETERMINED; AUTHORIZATION FOR OFFICE OF THE ATTORNEY GENERAL TO SEEK INJUNCTIVE RELIEF IN THE COURTS TO HAVE THE VESSEL "SS LA JENELLE" REMOVED FROM STATE LANDS; CLARITA VALLEY SALVAGE, INC., AND BAHAMA STAR SALVAGE CORPORATION, AS JOINT VENTURERS - W 2880.31, PRC 4539.9.

The Executive Officer reported on the following developments that had taken place subsequent to preparation of Calendar Item 4 attached:

The sale of the ship, which was in escrow at the time of the last Commission meeting, was consummated, and the bill of sale was issued; the vessel was purchased by Mr. Timothy M. Holabird, who had been associated previously with the Bahama Star Salvage Corporation; Mr. Holabird took possession of the vessel, and has had security service posted, with guards; he has had lights installed for night protection; he moved in heavy equipment, including a heavy-duty crane with a long fork, on Friday, July 23; and he deposited in the bank, in accordance with the terms of the lease, monies in excess of the amounts due the State under the \$500-a-month provision for the past period; the bank has indicated that no funds will be released from the deposit that would reduce the balance below that required to be maintained on a current basis in accordance with the terms of the lease.

It had appeared from the foregoing that the State's problem was under control. However, it was learned that at 9:00 a.m. this date (July 26) there had been a discussion in the Ventura County Superior Court, by the various parties involved, concerning the legality of the sale transaction, with an ultimate determination to be made as to who the owners of the vessel really are.

The Executive Officer therefore submitted a revised recommendation; i.e., that the Commission take two steps, as follows:

- (1) Extend the lease to the joint lessees for another month; and (2) authorize the Office of the Attorney General to proceed with an action in injunctive relief to get a court order, to all parties concerned, requesting and demanding that the vessel be removed, so that irrespective of what occurs in the future, there will be the force of a court determination that the vessel must be removed.

Appearances were then made by:

Mr. Timothy M. Holabird, President of Clarita Valley Salvage, Inc., who reported that the Navy had issued an exclusive license to his company for use of the lands on the beach itself, although there is a question as to whether these are State lands or Federal property. Mr. Holabird asked that the lease be amended to show his company as having sole ownership. (It was pointed out by the Commission that, at this time, it could not do other than continue the lease as a joint venture because of the unsolved title problem.)

Mr. Evangelos S. Aslanidis, Authorized Agent, and Mr. Ray M. Miller, Vice President, of the Bahama Star Salvage Corporation, who claimed that Mr. Holabird had obtained the bill of the sale on the ship through illegal means.

It was the consensus of the Commission that it could not take specific action currently on amending the lease because of the question of legal title, and that at this time any extension of the lease would have to be in the names of all those involved in the original joint venture.

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

THE COMMISSION:

1. AUTHORIZES THE EXECUTIVE OFFICER TO: (A) ISSUE A ONE-MONTH ADDITIONAL EXTENSION OF LEASE PRC 4539.9, IN THE NAMES OF CLARITA VALLEY SALVAGE, INC., AND BAHAMA STAR SALVAGE CORPORATION, AS JOINT VENTURERS; AND (B) MODIFY LEASE PRC 4539.9, AT SUCH TIME AS IT IS DETERMINED TO THE SATISFACTION OF THE ATTORNEY GENERAL THAT THE LEGAL TITLE PROBLEM HAS BEEN RESOLVED SO THAT IT WILL BE IN THE NAME OF THE PERSON OR PERSONS WHO HAVE LEGAL TITLE; AND
2. AUTHORIZES THE OFFICE OF THE ATTORNEY GENERAL TO PROCEED WITH AN ACTION FOR INJUNCTIVE RELIEF BY REMOVAL OF THE VESSEL "SS LA JENELLE" FROM STATE LANDS.

Attachment:

Calendar Item 4 (2 pages)

CALENDAR ITEM

7/71
W 2880.31
FDU

4.

AUTHORIZATION FOR ATTORNEY GENERAL TO TAKE NECESSARY LEGAL ACTION TO HAVE THE VESSEL "SS LA JENELLE" REMOVED FROM STATE-OWNED TIDE AND SUBMERGED LANDS IN VENTURA COUNTY.

On April 13, 1970, the passenger ship "SS La Jenelle" broke loose from its mooring two miles offshore Port Hueneme and washed ashore adjacent to the entrance of Port Hueneme Harbor on State-owned tide and submerged lands. Immediately after the beaching, the State Lands Commission contracted for a salvage estimate to determine the removal costs for the vessel. The estimate at that time was \$718,754. Since then the hull has deteriorated and been sanded in to such extent that present removal costs probably would be much higher. Bahama Star Salvage Corporation (Bahama), who bought the ship in a bankruptcy action, entered into a joint venture agreement with Clarita Valley Salvage, Inc. (Clarita), to remove and salvage the ship as a profit-making venture at no cost to the State. In November 1970, the State Lands Commission entered into a lease with the joint venturers providing for the salvagers to occupy the State-owned tide and submerged lands in order to remove the vessel and to restore the beach to its original condition. On March 30, 1971, Bahama sent a "Notice of Recission" to the Board of Directors of Clarita, in order to terminate the agreement between the two companies. The Division has made regular inspections of the site. As reported previously on June 23, 1971, the joint venturers and Bahama by itself have failed to perform the acts called for in the lease with the State. These breaches of the lease agreement include:

- (1) Failure to perform substantive acts to remove the vessel and to restore the beach. All that has occurred is that the salvagers have fenced off an area of the beach, have some minor equipment on the site, and have salvaged small amounts of easily removed scrap;
- (2) Failure to deposit any of the agreed rental of \$500 per month to the State into an agreed bank account;
- (3) Failure to keep in full force and effect specific public liability and property damage insurance for the protection of both the lessee and the State;
- (4) Failure to keep accurate books of account covering the operation of the joint venture.

On June 22, 1971, the State Lands Division was advised informally of a pending sale of the ship. At the June 23, 1971, meeting of the State Lands Commission, authorization was given to extend the existing lease PRC 4539.9 one additional month (until August 1, 1971) in order to resolve the question of ownership and to ascertain the potential of future salvage operations.

THREE ALTERNATIVES FOR COMMISSION ACTION ARE AVAILABLE:

1. CONTINUE THE EXISTING LEASE ON A MONTH-TO-MONTH BASIS AS PROVIDED THEREIN.

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CALENDAR ITEM 4. (CONT'D.)

2. AUTHORIZE THE EXECUTIVE OFFICER TO RENEGOTIATE A NEW LEASE WITH THE PARTIES DETERMINED TO BE THE OWNERS OF THE SHIP, AND TO TAKE NECESSARY ACTION TO TERMINATE THE EXISTING LEASE IN CONJUNCTION THEREWITH.
3. A. FIND THAT THERE HAS BEEN UNREASONABLE DELAY IN REMOVING THE VESSEL "SS LA JENELLE", AND THAT THE TERMS AND CONDITIONS OF STATE LEASE PRC 4539.9 HAVE NOT BEEN PERFORMED AND THAT SAID LEASE SHALL NOT BE RENEWED; AND
B. AUTHORIZE THE EXECUTIVE OFFICER TO GIVE THE NECESSARY NOTICES TO TERMINATE ANY RIGHTS OF THE LESSEE UNDER SAID LEASE PRC 4539.9 EFFECTIVE AUGUST 1, 1971; AND
C. AUTHORIZE THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL APPROPRIATE LEGAL ACTION, INCLUDING FILING AN ACTION IN EJECTMENT AND FOR DAMAGES AGAINST THE LESSEES UNDER PRC 4539.9 AND FOR SECURING LEGAL TITLE TO SAID VESSEL BY ACTIONS IN FEDERAL BANKRUPTCY AND ADMIRALTY COURTS OR STATE COURTS; AND
D. AUTHORIZE THE EXECUTIVE OFFICER AND THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL APPROPRIATE ACTION TO CAUSE THE VESSEL TO BE REMOVED, INCLUDING NEGOTIATIONS WITH APPROPRIATE FEDERAL AGENCIES FOR SUCH REMOVAL.