

19. PROPOSED BOUNDARY SETTLEMENT LAND EXCHANGE AND LEASE AMENDMENT WITH STAUFFER CHEMICAL COMPANY, CONTRA COSTA COUNTY - W 8759, BLA 124.

After consideration of Calendar Item 13 attached, and upon motion duly made and carried, the following resolution was adopted:

THE COMMISSION:

1. FINDS THAT THE EXCHANGE OF LANDS SET FORTH IN THE AGREEMENT REFERRED TO IN RECOMMENDATION 2(a) BELOW AS EXHIBIT "1" IS IN THE BEST INTEREST OF THE STATE FOR THE IMPROVEMENT OF NAVIGATION, AND TO ENHANCE THE CONFIGURATION OF THE SHORELINE FOR THE IMPROVEMENT OF THE WATER AND UPLAND.
2. AUTHORIZES:
 - (a) THE EXECUTION OF THE BOUNDARY AGREEMENT, QUITCLAIMS, AND OPTION AGREEMENT IDENTIFIED AS EXHIBIT "1", WHICH IS ON FILE IN THE OFFICE OF THE STATE LANDS COMMISSION AND BY REFERENCE MADE A PART HEREOF.
 - (b) THE EXECUTION OF THE CONSENT TO THE ASSIGNMENT OF LEASE PRC 563.1, AS AMENDED, FROM MOUNTAIN COPPER COMPANY TO STAUFFER CHEMICAL COMPANY; SAID ASSIGNMENT AND CONSENT TO ASSIGNMENT SHALL BE IN THE FORM SET FORTH IN EXHIBIT "E" TO SAID EXHIBIT "1".
 - (c) EXECUTION OF THE AMENDMENT TO PRC 563.1 AS AMENDED, THE FORM OF SAID AMENDED LEASE TO BE AS SPECIFIED IN EXHIBIT "F" OF EXHIBIT "1" ABOVE.
3. FINDS, UPON THE RECORDATION OF THE AGREEMENT DESCRIBED IN PARAGRAPH 2(a) ABOVE (EXHIBIT "1"), THAT THE REAL PROPERTY AS TO WHICH THE STATE TRANSFERS, ASSIGNS, AND QUITCLAIMS ANY INTEREST THE STATE MAY HAVE THEREIN, WHICH REAL PROPERTY IS DESCRIBED IN PARAGRAPH 7 OF SAID AGREEMENT (EXHIBIT "1"), HAS BEEN IMPROVED, FILLED, AND RECLAIMED BY STAUFFER CHEMICAL OR ITS PREDECESSORS IN INTEREST, AND HAS THEREBY BEEN EXCLUDED FROM THE PUBLIC CHANNELS AND IS NO LONGER AVAILABLE OR USEFUL OR SUSCEPTIBLE OF BEING USED FOR NAVIGATION AND FISHING, AND IS NO LONGER IN FACT TIDELANDS OR SUBMERGED LANDS, AND THEREFORE SHALL, UPON SAID RECORDATION, BE FREED FROM THE PUBLIC TRUST FOR NAVIGATION AND FISHING.
4. AUTHORIZES THE STATE LANDS DIVISION TO PERFORM ALL OTHER ACTS NECESSARY TO ACCOMPLISH THE PROPOSED BOUNDARY SETTLEMENT LAND EXCHANGE AGREEMENT PURSUANT TO THE AGREEMENT REFERRED TO IN RECOMMENDATION 2(a) ABOVE, INCLUDING, BUT NOT LIMITED TO, THE APPEARANCE OF THE OFFICE OF THE ATTORNEY GENERAL ON BEHALF OF THE COMMISSION IN APPROPRIATE LEGAL PROCEEDINGS CONCERNING THE ACTION TAKEN IN THIS TRANSACTION.

Attachment:

Calendar Item 13 (4 pages)

CALENDAR ITEM

13.

11/71
W 8759
W 396.537
LHG

PROPOSED BOUNDARY SETTLEMENT LAND EXCHANGE AND LEASE AMENDMENT
WITH STAUFFER CHEMICAL COMPANY, CONTRA COSTA COUNTY

For many years prior to 1950, various types of slag were deposited on State lands at the edge of Suisun Bay in the vicinity of Bulls Head Point near the Benicia Bridge in Contra Costa County. This material was placed there by the Mountain Copper Co. and its predecessors. In 1950 the State required Mountain Copper Co. to enter into a lease with the State Lands Commission covering the slag-disposal area (P.R.C. 563.1). There has been no agreement between Mountain Copper Co., which was the owner of the abutting uplands, and the State as to the common boundary between their respective interests. Said common boundary is the ordinary high water mark as it last existed in a natural state.

Further research on the question of the boundary location revealed that the landward boundary of the lease to Mountain Copper Co. was in error, and the lease was amended by the Commission in 1967, along with the granting of an additional ten-year lease period.

Approximately three years ago, Stauffer Chemical Company acquired the interests of Mountain Copper Co. at Bulls Head Point. It has not received a formal assignment from Mountain Copper Co. of the State lease, although the slag-disposal area appears to be an integral part of the operations conducted at the site.

The Division has requested Stauffer to obtain a formal assignment and to submit it for approval to the Commission. To date, Stauffer has refused to agree to an amendment of the lease without a resolution of existing title and boundary problems with the State. However, Stauffer is willing to enter into an assignment and amendment of the lease as a part of the resolution of said outstanding problems.

During the negotiations, the San Francisco Bay Regional Water Quality Control Board issued Order No. 71-24, requiring the abatement of pollutants entering Suisun Bay from Stauffer property and the lease area. The pollutants resulted from a chemical reaction between rain runoff waters and the slag deposits.

Throughout negotiations the Division has sought to require Stauffer to:

1. Assume the outstanding lease and accept a modification thereof to include an enlargement of the lease area so that the entire pollution problem can be abated.
2. Eliminate the 60-day cancellation provision at the full option of the private party.

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3. Require Stauffer to extend the period of time for which it is responsible for preventing pollutants from entering Suisun Bay.

Stauffer has indicated a willingness to agree to such an amended lease as a part of the settlement of the title and boundary problems that are outstanding.

There are two title and boundary problems that are settled by the proposed agreement. The first concerns the common boundary between the uplands of Stauffer Chemical and the abutting sovereign lands of the State. As noted, this boundary is the ordinary high water mark of Suisun Bay as it last existed in a natural state. By reason of the artificial influences at the subject area, said ordinary high water mark does not coincide with the present ordinary high water mark of the bay. Research by the Division and Stauffer has resulted in a proposed agreement upon the location of the ordinary high water mark as it last existed at the area in question.

The second problem concerns title claims of the State within a portion of the Stauffer property that was originally patented by the State in 1870. Although said patent was designated as one for swamp and overflowed lands, the State has contended that it contained a portion of tide lands located within a tortuous tidal tributary traversing a portion of the patented area. There is no agreement between the parties as to the extent, width, or existence of such a tide land area. For purposes of compromise and settlement, Stauffer has indicated a willingness to convey to the State an easement, for trust purposes of commerce, navigation, and fisheries, of a fixed usable width across the Stauffer property that will provide the State with better land access to the State property on Suisun Bay. Stauffer also will grant the State an option to acquire additional easement area if such should become necessary. In exchange for this, the State will quitclaim any claim of right, title, or interest in the remaining upland property of Stauffer Chemical. The remaining property of Stauffer Chemical, as to which the State will quitclaim any of its interest, has been improved, filled, and reclaimed by Stauffer or its predecessors in interest, and is no longer subject to tidal action.

The result of this transaction will be:

1. To define the common boundary between the State sovereign lands along the portion of Suisun Bay affected by this agreement and the abutting private upland ownership.
2. The recognition and precise location of an easement for commerce, navigation, and fisheries and public access to Suisun Bay across the lands of Stauffer Chemical.
3. A formal assignment by Mountain Copper Co. to Stauffer Chemical Company and the approval thereof by the State.

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4. An amendment of said lease, enlarging the lease area so that the entire pollution can be abated.
5. An amendment of said lease to allow Stauffer to remove any or all contaminating ore below one foot of elevation above mean high tide line and replace it with clean sand or earthen fill. Such authorization to be effective only if permitted by State and local agencies with jurisdiction.
6. Elimination of the 60-day cancellation provision of the lease at the option of the lessee.
7. Extension of the period of time for which Stauffer is responsible for pollution control to November 19, 1985.

An evaluation has been made by the Division indicating that the State will receive equal or greater value as a result of the exchange.

The entire matter has been reviewed and approved by the Office of the Attorney General. In a letter of opinion dated October 14, 1971, the Attorney General states that this transaction is exempt from the provisions of Chapter 1555 of the Statutes of 1970.

EXHIBITS: A. Location map. B. Parcel map.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE EXCHANGE OF LANDS SET FORTH IN THE AGREEMENT REFERRED TO IN RECOMMENDATION 2(a) BELOW AS EXHIBIT "1" IS IN THE BEST INTEREST OF THE STATE FOR THE IMPROVEMENT OF NAVIGATION, AND TO ENHANCE THE CONFIGURATION OF THE SHORELINE FOR THE IMPROVEMENT OF THE WATER AND UPLAND.
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 - (c) EXECUTION OF THE AMENDMENT TO P.R.C. 563.1 AS AMENDED, THE FORM OF SAID AMENDED LEASE TO BE AS SPECIFIED IN EXHIBIT "F" OF EXHIBIT "1" ABOVE.

CALENDAR ITEM 13. (CONTD.)

3. FIND, UPON THE RECORDATION OF THE AGREEMENT DESCRIBED IN PARAGRAPH 2(a) ABOVE (EXHIBIT "1"), THAT THE REAL PROPERTY AS TO WHICH THE STATE TRANSFERS, ASSIGNS, AND QUITCLAIMS ANY INTEREST THE STATE MAY HAVE THEREIN, WHICH REAL PROPERTY IS DESCRIBED IN PARAGRAPH 7 OF SAID AGREEMENT (EXHIBIT "1"), HAS BEEN IMPROVED, FILLED, AND RECLAIMED BY STAUFFER CHEMICAL OR ITS PREDECESSORS IN INTEREST, AND HAS THEREBY BEEN EXCLUDED FROM THE PUBLIC CHANNELS AND IS NO LONGER AVAILABLE OR USEFUL OR SUSCEPTIBLE OF BEING USED FOR NAVIGATION AND FISHING, AND IS NO LONGER IN FACT TIDELANDS OR SUBMERGED LANDS, AND THEREFORE SHALL, UPON SAID RECORDATION, BE FREED FROM THE PUBLIC TRUST FOR NAVIGATION AND FISHING.

4. AUTHORIZE THE STATE LANDS DIVISION TO PERFORM ALL OTHER ACTS NECESSARY TO ACCOMPLISH THE PROPOSED BOUNDARY SETTLEMENT LAND EXCHANGE AGREEMENT PURSUANT TO THE AGREEMENT REFERRED TO IN RECOMMENDATION 2(a) ABOVE, INCLUDING, BUT NOT LIMITED TO, THE APPEARANCE OF THE OFFICE OF THE ATTORNEY GENERAL ON BEHALF OF THE COMMISSION IN APPROPRIATE LEGAL PROCEEDINGS CONCERNING THE ACTION TAKEN IN THIS TRANSACTION.