

27. STATUS OF MAJOR LITIGATION.

The attached Calendar Item 25 was submitted to the Commission for information only, no action thereon being necessary.

Attachment:

Calendar Item 25 (8 pages)

INFORMATIVE CALENDAR ITEM

6/72

25.

STATUS OF MAJOR LITIGATION

As of May 31, 1972, there were 211 litigation projects involving the Commission, an increase of 6 from last month. There are three general categories: Condemnation (61 projects), Quiet Title Action (100) and Other (50). The status of the projects most active in the past month is contained in the following summary:

1. Dillon v. Atchison, Topeka and Santa Fe Railway Company
San Diego Superior Court Case No. 283455

W 503.456

(To determine validity of Tideland Survey No. 17, based upon a Patent from the Governor of about 1871.)

The San Diego Unified Port District and the State of California have filed the Joint Respondents' Brief. After appellants' closing brief is filed, the case will be argued before the Appellate Court.

2. Boyd v. State
Contra Costa Superior Court Case No. 95769

W 503.470

(Plaintiff seeks to quiet title to several alleged berms of approximately one acre within Piper Slough between Bethel Island and Frank's Tract on the basis of adverse possession.)

Trial is scheduled for the latter part of July, 1972.

3. Napa Sanitation District v. State, et al.
Napa Superior Court Case No. 22114

W 503.498

(Condemnation action by plaintiff for lands adjacent to Napa River several miles below the City of Napa for use as settling ponds.)

The matter was taken off the trial calendar as Plaintiff has now settled with all defendants other than the State. The Attorney General and State Lands Division staff are in the process of completing a proposed settlement between the State and the Plaintiff for the consideration of the Commission and the Board of Plaintiff District.

INFORMATIVE CALENDAR ITEM NO. 25. (CONTD)

4. Miller v. City of Santa Monica, et al.
Los Angeles Superior Court Case No. 892295

W 503.510

(An action by private upland owners involving title to tidelands that have artificially accreted. Both the State Lands Commission and the Division of Beaches and Parks have interests to protect.)

Plaintiffs voluntarily dismissed the case. State and City may file new action if the parties do not remove the encroachments.

Notices by City and Attorney General mailed September 24, 1971, and October 28, 1971, to the 34 property owners believed to be responsible for the encroachments involved in this matter, informing the owners that action would be taken by the State of California and the City of Santa Monica if they failed to voluntarily remove the encroachments within sixty days. Public meeting held April 6, 1972, for general exchange of views to explore possibility of settlement. Landowners requested to respond within thirty days to City and State proposals.

5. Marks v. Whitney
Marin Superior Court Case No. 37048

W 503.534

(This quiet title action involved undeveloped tidelands in Tomales Bay which had been patented into private ownership by the State in 1874.)

It has been remitted to the Trial Court after the opinion of the California Supreme Court reported in 6 C 3d 251, wherein the public trust rights over patented tidelands were upheld consistent with the 1913 case of People v. California Fish Co. 166 C 576. The case is presently under submission and awaits the further judgment of the Trial Court.

6. County of San Mateo v. Ideal Cement Company, et al.
San Mateo Superior Court Case No. 125379 (companion case to No. 144257)

W 503.539

(In order to obtain uniformity of decision, the State has filed an Answer to the Complaint. This action is a condemnation matter brought by the County of San Mateo, concerning lands located within the aforementioned statutes (Ch. 1857/65). The State contends that said lands were granted in trust to the County, or in the alternative, that the County received an easement over said lands in trust which permits the County to use the subject property for the purposes contemplated by the condemnation action.)

Stipulation has been signed by all parties, continuing any further proceedings in the case until there is a resolution of the issues presented in State of California v. County of San Mateo, et al., Case No. 144257. Maps have been prepared but are not yet approved. An agreement has been reached to withhold their being filed for record.

INFORMATIVE CALENDAR ITEM NO. 25. (CONTD)

7. Marin Municipal Water District v. State " 503.541
Marin Superior Court Case No. 49577

(Plaintiff seeks to quiet title to lands alleged by the State to be located within the former bed of the State-owned San Rafael Canal consisting of a tidal navigable waterway reserved by the former Board of Tide Land Commissioners.)

The case is at issue. No current action pending completion of the survey by the City (Trust Grantee) pursuant to Chapter 1742, Statutes of 1971.

8. Ad Valorem Tax Litigation W 503.546

(Various actions by oil companies to recover ad valorem taxes. The potential fiscal impact upon the State of this litigation is substantially in excess of \$100 million.)

Negotiations are pending to settle the matter while we are awaiting the Pre-Trial Conference.

9. County of Orange, et al. v. Heim, State of California W 4926
Real Party in Interest W 503.576
Orange Superior Court Case No. M-1105 (formerly Case
No. 4 Civil 9344)

(Petition for Writ of Mandate involving the legality of the Upper Newport Bay Exchange approved by the State Lands Commission.)

On February 18, 1971, the trial court upheld the action of the Commission in approving the validity of the Orange County-Irvine Exchange Agreement. The appeal therefrom is still pending. Closing briefs will not be completed for about 30 days. Appellant Heim's Opening Brief was served upon the Attorney General on February 22, 1972. Intervenor's Opening Brief has been filed and the State is now preparing its Brief in this matter.

10. Simpson v. State W 503.578
Sonoma Superior Court Case No. 60178

(Plaintiff seeks to quiet title to a portion of Bodega Bay as successor to a State Tideland Patent.)

State and County (Trust Grantee) claim public ownership by reason of the tidal-navigable character of the waterway in its natural location. Settlement negotiations are in process.

INFORMATIVE CALENDAR ITEM NO. 25. (CONTD)

11. Delta Farms Reclamation District v. State
San Joaquin Superior Court Case No. 97183

W 503.585

(Plaintiff seeks to quiet title to an alleged berm of about 80 acres on San Joaquin (Old River) west of Stockton at Bacon Island and the claimed successor to a State Swamp and Overflowed Patent.)

Have had Discovery; Pre-Trial Conference is anticipated in the fall of 1972.

12. Federated Mortgage Investors, et al. v. Charles Lick, et al.
Los Angeles Superior Court Case No. 940856

W 503.586

(An action between private parties to determine ownership of the Lick Pier (Pacific Ocean Park), and to determine the ordinary high water mark at that point.)

The Federal Court has refused to take jurisdiction to determine the Mean High Tide Line, and the private parties will bring a State suit to determine the Mean High Tide Line. On May 26, 1972, the State was sued in Declaratory Relief by Matador Land Co. to determine the location of the Mean High Tide Line (L.A. Superior Court Case No. 30527).

13. Donnell v. Bisso
Sonoma Superior Court Case No. 62402

W 503.607

(Plaintiff seeks to quiet title to about two miles of the bed of Bihler Slough located immediately north of Tubbs Island.)

A State response will not be required until plaintiff amends his complaint. A probable defense of the State will be that lands within the Slough are State-owned tidal-navigable waters.

14. Sagar v. County of Orange, et al.
Orange Superior Court Case No. M-1164

W 503.621

(Private parties brought an action against the County for vacating a road which provided the only access to the Salt Creek Beach.)

The Commission's action approving an exchange of uplands included provision for access to Salt Creek Beach and has been forwarded to the County. The Attorney General and Orange County Board of Supervisors have also approved said agreement. No further action required by the Commission in this case.

INFORMATIVE CALENDAR ITEM NO. 25. (CONTD)

15. U.S. v. 1119.992 Acres (Solano) 1418
U.S. v. 1393.464 Acres (Contra Costa) 369

W 503.625
W 503.628

(These are omnibus U.S. condemnations for the Port Chicago buffer zone. Numerous parcels are included with questions involving disputed boundaries of the State's ownership of the bed of the tidal-navigable waters of Suisun Bay and adjacent waterways.)

The different parcels are in various stages of litigation. Settlement negotiations are under way with respect to several parcels, with the State having recently executed a disclaimer as to Parcel 644, excluding Hastings Slough.

16. Southern Pacific Transportation v. Evers
Solano Superior Court Case No. 49386

W 503.631

(Plaintiff seeks to quiet title to lands along the Vallejo Waterfront as successor to a Railroad Grant and a Tideland Patent.)

The boundaries and the existence and extent of any private interests are disputed by State. Settlement negotiations are in process, with the trial scheduled to recommence on July 20, 1972.

17. Union Pacific Railroad Company, et al. v. City of Long Beach
Court of Appeals Case No. 36989, 2nd Civ.

W 503.641

(Suit attacking the City of Long Beach business license tax on oil production. That portion of the ordinance providing for revenues from unitized tideland operations was declared unconstitutional.)

On March 30, 1972, the California Appellate Court handed down its decision reversing the trial court. This constitutes a victory for the State and City.

The Appellate Court upheld the validity of Section 6100.99-2 of the Long Beach Municipal Code. The tidelands trust will be reimbursed for the tax money. The money judgment awarded by the trial court to L.B.O.D. was reversed, and the portion of the taxes previously paid need not be returned.

Plaintiff is expected to seek a rehearing in the California Supreme Court, as approximately \$10,000,000 of State funds are involved in this case. The Notice of Appeal has not yet been received.

INFORMATIVE CALENDAR ITEM NO. 25. (CONTD)

18. Westward Properties v. State
Butte Superior Court Case No. 50579

W 503.642

(Plaintiff seeks to quiet title to lands claimed by the State to be located within the former bed of the State-owned Feather River in Butte County just north of the Sutter County line.)

The case is at issue with no settlement negotiations in process.

19. Marin Yacht Club v. State
Marin Superior Court Case No. 58068

W 503.667

(Plaintiff seeks to quiet title to lands claimed by the State to be located within the bed of the State-owned San Rafael Canal, consisting of a tidal-navigable waterway reserved by the former Board of Tide Land Commissioners.)

The State's response to the complaint has not been filed and there is no current action in the case pending the survey by the City (Trust Grantee) pursuant to Chapter 1742, Statutes of 1971.

20. County of Orange v. Chandler Sherman, et al.
Orange Superior Court Case No. 178401

W 503.669

(The County brought the action, on an implied dedication theory, to quiet title to certain beach property near Dana Point.)

No change; i.e., Chandler Sherman filed an Answer and Cross Complaint on July 1, 1971.

21. Sebastiani v. State
Sonoma Superior Court Case No. 66440

W 503.677

(Plaintiffs seek to quiet title to half the bed of Sonoma Creek adjacent to its right or westerly bank upstream for about one mile from the Highway 121 Bridge a short distance below the City of Sonoma.)

The State claims the creek is a tidal-navigable waterway with the issue raised of State fee title in the lower meandered portion and a public easement over the upper portion. The case is at issue with settlement negotiations in process. Trial is scheduled for July 17, 1972.

INFORMATIVE CALENDAR ITEM NO. 25 (CONTD)

22. People v. Robinsor
Humboldt Superior Court Case No. 44736

W 503.694

(Condemnation for that portion of the State Highway Bridge in Humboldt Bay between Eureka and Samoa Peninsula which crosses Woodley Island.)

The State and the City of Eureka (Trust Grantee) are seeking to establish the boundary between the private lands of the Island and the State-owned tidal-navigable waters of the bay. The case is at the pleading stage, with the responsive pleadings of the State and the City only recently having been filed.

23. U.S. v. 1164.34 Acres
U.S. District Court Case No. 2274

W 503.696

(U.S. condemnation action for wildlife refuge of all the mud flats between the Sears Point Highway and San Pablo Bay bounded by Mare Island Navy Yard on the east and Sonoma Creek on the west.)

State claims public ownership of the lands as being tide-lands and submerged lands not included within the upland Swamp and Overflowed Lands Patent.

24. People v. William Kent Estate Company
Marin Superior Court Case No. 32824

W 1839.24

(Retrial of an action to abate a public nuisance (a fence erected and maintained perpendicular to the shoreline) on the Pacific Ocean side of the Bolinas Lagoon Sandspit. The case involved a judicial interpretation of the Statutory phrase "Ordinary High Water Mark.")

Transcripts on Appeal have been completed. Request for corrections of the record on appeal have been filed by the Attorney General's Office. Hearing was held April 24, 1972, on State's request for corrections. Request for corrections were denied except as to 6 items. Request for transcript has been filed with Court of Appeal. Appellate Court will be requested to augment the record. Appellant's (State) Opening Brief being prepared.

INFORMATIVE CALENDAR ITEM NO. 25. (CONT'D)

25. State of California v. County of San Mateo, et al.
San Mateo Superior Court Case No. 174257

W 6987
W 1839.28

(A declaratory relief action to determine what interests were conveyed in trust to the County of San Mateo by Chapter 1857, Statutes of 1965, in certain tidelands and submerged lands in South San Francisco Bay.)

First Amended Complaint for Declaratory Relief and to Quiet Title was filed on November 15, 1971. On April 21, 1972, Westbay Community Associates filed a cross complaint to add thousands of acres within the bay to the suit.

26. People v. Vincilione, et al. (People v. Evans, et al.)
Riverside Superior Court Case No. 15156

W 1839.29

(An action to protect fishing rights in the Colorado River.)

Matter still under submission. Interrogatories have been filed by both sides. Title to the natural bed of the river is in question.

27. People v. Clarita Valley Salvage, Inc., et al.
Ventura Superior Court Case No. 54428

W 1839.30

(An action for relief under the Harbors and Navigation Code Section 552; injunction; trespass and for damages.)

This action is to enable the State to take possession of the ship La Jenelle, to effectively guard it and have it removed. A temporary restraining order was granted on the State's behalf March 27, 1972. A hearing on the State's request for a preliminary injunction was held May 26, 1972. A preliminary injunction was issued June 2, 1972, granting the State all relief sought in the action.