

MINUTE ITEM

12/21/72
SCL

18. AUTHORIZATION TO EXECUTE PROPOSED STIPULATION FOR JUDGMENT IN SETTLEMENT OF U.S. V. 26.1 ACRES OF LAND, COUNTY OF EL DORADO, STATE OF CALIFORNIA; MARIA KIP ORPHANAGE, ET AL., CIVIL NO. S-2154 - W 503.697.

After consideration of Calendar Item 17 attached, and upon motion duly made and carried, the following resolution was adopted:

THE COMMISSION AUTHORIZES THE EXECUTIVE OFFICER TO EXECUTE THE PROPOSED STIPULATION ON FILE IN THE OFFICE OF THE STATE LANDS COMMISSION AND BY REFERENCE MADE A PART HEREOF ON BEHALF OF THE STATE LANDS COMMISSION AS A SETTLEMENT OF U.S. V. 26.1 ACRES OF LAND, COUNTY OF EL DORADO, STATE OF CALIFORNIA, ET AL., CIVIL NO. S-2154.

Attachment:

Calendar Item 17 (2 pages)

A 6
S 3

CALENDAR ITEM

12/72

SCL

17.

W 503.697

PROPOSED STIPULATION FOR JUDGMENT IN SETTLEMENT OF
U.S. V. 26.1 ACRES OF LAND, COUNTY OF EL DORADO, STATE OF CALIFORNIA;
MARIA KIP ORPHANAGE, ET AL., CIVIL NO. S-2154

The proposed stipulation for judgment will allow the United States to condemn the State's public easement for commerce, navigation, and fishery in the American River. The consideration to be received by the State will be the improvements to navigation and recreation by the construction of the Auburn Dam. The easement will be condemned along the American River as it flows through Sections 33 and 34, T. 13 N., R. 9 E., M.D.M., and Section 23, T. 13 N., R. 9 E., M.D.M.

The State's interest in the property in question consists of the public easement for commerce, navigation, and fishery. This interest evolved from the case law established in Bohn v. Albertson, 107 C.A. 2d 738, (1951), and People ex rel., Baker v. Mack, 19 C.A. 3d, 1040, (1971), which stated that the test of navigability for purposes of establishing the right of public access and navigation is navigability in fact, by any kind of vessel, for any kind of commerce or travel.

The U.S. Attorney's office requested that the State file a disclaimer in this matter; however, the Division has concluded that a disclaimer could be construed as an admission or a basis for collateral estoppel with regard to any claim of State interest in other portions of the waterway not involved in the subject litigation.

If such a disclaimer, rather than the proposed stipulation were filed, it would be possible at some later date for a party to prohibit the State from asserting claims because the State had admitted that the American River was not navigable at this point. The use of the stipulation rather than a disclaimer protects the State's ability to establish and protect all claims in the future.

The United States Attorney has represented that the U.S. is acquiring the subject lands for the purpose of transferring control thereof to the California Department of Parks and Recreation to operate in accordance with a reservoir area management plan which would include within its scope recreational boating. Under these circumstances, the Division believes that State is receiving adequate non-monetary consideration for the taking.

The proposed stipulation for judgment avoids the problem of collateral estoppel and would not constitute an admission either as to title or as to value.

A gap exists between the parcels of land involved in this action because the United States has not yet concluded as to action to be taken against the State's interest in other parcels in the Auburn Reservoir area.

CALENDAR ITEM NO. 17. (CONTD)

The proposed stipulation has been reviewed and approved by the office of the Attorney General.

EXHIBIT: A. Location Map. B. Stipulation for Judgment.

IT IS RECOMMENDED THAT THE COMMISSION AUTHORIZE THE EXECUTIVE OFFICER TO EXECUTE THE PROPOSED STIPULATION ON FILE IN THE OFFICE OF THE STATE LANDS COMMISSION AND BY REFERENCE MADE A PART HEREOF ON BEHALF OF THE STATE LANDS COMMISSION AS A SETTLEMENT OF U.S. v. 26.1 ACRES OF LAND, COUNTY OF EL DORADO, STATE OF CALIFORNIA, ET AL., CIVIL NO. S-2154.