MINUTE ITEM 12/19/74
RCH

26. STATUS OF MAJOR LITIGATION.

The attached Informative Calendar Item 24 was submitted to the Commission for information only, no action thereon being necessary.

Attachment:
Informative Calendar Item 24 (4 pages)

INFORMATIVE CALENDAR ITEM 12/74
RCH

24.

STATUS OF MAJOR LITIGATION

As of November 30, 1974, there were 240 litigation projects involving the Commission, up one from last month.

1. City of Albany v. State W 503.726
Alameda Superior Court Case No. 42896

(Plaintiff seeks declaratory relief with regard to the State Lands Commission finding that the 1961 tideland grant to the City of Albany had not been substantially improved.)

The court of appeals modified its injunction to prohibit any further fill within the waters of San Francisco Bay. The new order, however, allows the additional piling of material on the existing fill.

On January 21, 1974, the court of appeals ruled on the merits of the case before it. The court ruled that the formation of the State Lands Commission at the meeting terminating the Albany grant was proper. The case is remanded to the Superior Court for trial on the issue of substantial improvement. The date of trial is not yet determined. The City of Albany petitioned the California Supreme Court for a hearing on the matter and the petition was denied.

The State's motion for summary judgment in the matter was denied in the Superior Court of Alameda County. The Office of the Attorney General filed a cross-complaint in quiet title. In conjunction with this cross-complaint, the Attorney General sought injunctive relief to prohibit all piling activity on this area. A preliminary injunction was granted on November 25, 1974, against the City of Albany and its dumping operator, prohibiting further horizontal filling of debris that intrudes upon San Francisco Bay waters. The order, however, does not preclude further piling. Thus, the order of the Superior Court is identical to the prior order of the District Court of Appeal and in effect allows continuing piling upon the dump site and does not completely prohibit the activity of the land fill company.

W 503.743

2. State of California v. Dart Industries, Inc., et al.
Nevada County Superior Court Case No. 18595

(Ejectment action to compel removal of purprestures from Donner Lake.)

On July 2, 1973, the State filed complaint in ejectment for damages, and to compel the removal and prevent the maintenance of purprestures which obstruct navigation and interfere with the exercise of the public trust over navigable waters of Donner Lake. The purprestures are in the form of a landfill, a concrete boat launching ramp, and a water intake pipeline which encroach waterward into the lake.

Defendants in this action have been served with summons and complaint and have been granted an indefinite extension of time in which to answer, contingent upon their application for and attainment of the appropriate leases and permits. (The draft environmental impact report by the Tahoe Donner Public Utility District has been prepared in draft form and is currently being circulated.) The lease applications have been received. The BLA and exchange agreement were approved by the Commission at its June 6, 1974, meeting, and the documents have now been recorded in order to complete the exchange.

W 503.737

3. Pariani v. State of California
San Francisco Superior Court Case No. 657291

(Plaintiff seeks to quiet title to three parcels of land in Sonoma and Lake Counties. State patented said land into private ownership in 1953, reserving all mineral rights. Plaintiff now seeks to determine whether geothermal energy was reserved to the State under the 1953 patent.)

The Attorney General's Office filed a cross-complaint in July 1973, and in October 1973 a demurrer was filed to certain answers filed by one group of plaintiffs. On December 4, 1973, the Court upheld the State demurrer, thereby eliminating three of the plaintiff's defenses in the case.

On May 1, 1974, the San Francisco Superior Court denied defendants motion for summary judgment and judgment on the pleadings. On July 25, 1974, the Attorney General's Office served interrogatories on all parties to the litigation. To date, no responses have been received.

3. Union Oil Company of California v. Houston I. Flourney, et al. W 503.747
U. S. District Court, Central District

(An action by Union Oil Company to prevent the State from selling royalty oil.)

Under State Oil and Gas Lease PRC 3033.1 entered into with Union Oil Company, the Commission had the right to receive royalty payments in kind. At its July 1973 meeting, the Commission announced its intention to receive bids for this royalty oil and for royalty oil for other Orange and Los Angeles County leases. Bids were subsequently received for this royalty oil. The contract for the purchase of this oil was to be awarded at the October 25, 1973, Commission meeting, but this award was prevented by Union's filing and obtaining on October 24, 1973, an order to show cause and temporary restraining order. Union alleged chat the sale was in violation of the Federal Government "Phase IV" price controls and was hence illegal. On November 5, 1973, the preliminary injunction obtained by Union was denied and the temporary restraining order was dissolved.

On November 29, 1973, the Commission awarded the contract to purchase the oil. That same day, Plaintiff applied for another temporary restraining order to prevent the sale, which order was denied. Plaintiff's second application for preliminary injunction was heard and denied on December 17, 1973. A pretrial conference was held on June 3, 1974, at which time Union indicated they would hold the case in abeyance pending the outcome of People v. Simon. Another preliminary pretrial hearing has been set for December 9.

4. People v. William E. Simon, et al. W 503.766
U. S. District Court, Central District of California
Civil No. 74-661-JWC

(Action to declare invalid Federal Energy Office revocation of State crude oil exemption issued February 21, 1974.)

The District Court granted a final judgment in favor of State and an appeal was taken by the Federal Energy Office (FEO) to the Temporary Emergency Court of Appeals (TECA). On July 26, 1974, the Court heard argument and reversed trial court decision, thus upholding the revocation of the State exemption by the FEO on February 21, 1974; which revocation was made retroactive to October 25, 1973. TECA rejected a petition for rehearing filed by the Attorney General, the Attorney General then filed a petition for a writ of certiorari in the Supreme Court of the United States. This petition has been denied.

5. State of California v. County of San Mateo, et al. W 1839.28
San Mateo Superior Court Case No. 144257 W 6987

Suit seeking Declaratory Judgment to protect the public property rights in land covered by the open waters of South San Francisco Bay westerly of the deep draught ship channel, the area of which has been substantially increased with the filing of a cross-complaint by Westbay Community Associates to be an approximate 10,000 acres and 21 miles of shoreline including most of the westerly portion of the Bay between the San Francisco International Airport and the southerly San Mateo County line. Titles to other adjacent substantial areas of salt ponds have been brought into the case with the filing of a complaint in intervention by Leslie Salt Co. Pretrial and discovery proceedings are now in progress, with factual investigation, relating to substantial and complex issues, continuing.

6. People v. Magoon Estate, Ltd. W 503.762
San Francisco Superior Court Case No. 12281

(An action in ejectment and quiet title.)

This action was brought against Magoon Estates, a development company owning property in Lake County. Magoon Estates claims to be the adverse possessor of a part of a lieu section which is surrounded by private holdings of Magoon Estates. It is the State's position that lieu lands and school lands cannot be adversely possessed as they are subject to a trust for the support of the public schools. The matter is presently in negotiation with the Attorneys for Magoon.