

MINUTE ITEM

This Calendar Item No. 46
was approved as Min. Item
No. 46 by the State Lands
Commission by a vote of 3
to 0 at its 7-25-76
meeting.

46

3/76
RCH
503.756

AUTHORIZATION TO EXECUTE SETTLEMENT AGREEMENT IN CONSTRUCTION
AGGREGATES CORPORATION v. STATE OF CALIFORNIA, et al., SAN
FRANCISCO SUPERIOR COURT NO. 669-359

This is an action for injunction and declaratory relief brought by plaintiff Construction Aggregates Corporation against the State Lands Commission, the City and County of San Francisco and its Port Commission, and Umpqua River & Navigation Company, a contractor for the Port of San Francisco. The suit was prompted by the City's expressed intention to provide its contractor with sand to construct a port facility from an area leased to plaintiff. The dispute concerns the respective sand extraction rights of the parties in an area of San Francisco Bay which was leased to plaintiff Construction Aggregates for sand extraction purposes in 1952 under lease PRC 709.1. The lease was renewed for a ten-year period in 1972. The City claims title, in trust, to a portion of the lands so leased under a transfer agreement between the State and the City which was authorized by the Burton Act (Stats. 1968, Ch. 1333).

Plaintiff claims that it has the exclusive right to take sand from the leased area, and that neither the State, nor the City and County of San Francisco, nor their lawful assigns have the right to take sand from the leased area. The State and the City claim that the lease is non-exclusive and that the City has the right under its transfer agreement from the State to use sand from the leased area for the construction of port facilities, as long as it does not unreasonably interfere with the prior sand extraction rights of the plaintiff. The issues posed are therefore: (1) is the lease exclusive; or, (2) if it is not exclusive, how much sand may the City extract without unreasonably interfering with the rights of Construction Aggregates Corporation?

It is uncertain how a court would dispose of these questions, and the parties have therefore arrived at a settlement of the litigation, subject to the approval of the San Francisco Port Commission and the State Lands Commission. Under the proposed settlement, the City would be allowed to extract sand from the areas leased to Construction Aggregates down to a level of 65 feet below mean lower low water without the prior consent of Construction Aggregates. If the City desired to extract sand below the 65-foot depth, it would first have to give Construction Aggregates thirty days written notice, in order that Construction Aggregates could, if it wished, seek appropriate judicial relief. The State Lands Commission would agree to renew the sand extraction lease with Construction Aggregates for one additional ten-year period, subject to such reasonable terms and conditions as the Commission might impose; provided, that as a part of such renewal all legal contentions of the

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the respective parties in the current lawsuit would be expressly reserved, together with recognition of the provisions of the settlement agreement. A copy of the proposed settlement agreement is on file in the offices of the State Lands Commission.

The City and County of San Francisco and the Attorney General recommend the approval of the proposed settlement as being in the best interests of the public and the public agencies involved.

IT IS RECOMMENDED THAT THE COMMISSION AUTHORIZE THE STAFF OF THE STATE LANDS COMMISSION AND THE OFFICE OF THE ATTORNEY GENERAL TO EXECUTE AN AGREEMENT IN SETTLEMENT OF LITIGATION IN CONSTRUCTION AGGREGATHS CORPORATION v. STATE OF CALIFORNIA, et al., SAN FRANCISCO SUPERIOR COURT NO. 669-359, IN ACCORDANCE WITH THE TERMS OF THE PROPOSED SETTLEMENT AGREEMENT PRESENTLY ON FILE IN THE OFFICES OF THE COMMISSION.