

MINUTE ITEM

This Calendar Item No. 22  
was approved by Minute Item  
No. 22 by the State Lands  
Commission by a vote of 3  
to 2 at RS 2/24/77  
meeting.

CALENDAR ITEM

22.

2/77  
W 20911  
ACS

AUTHORIZATION FOR SUIT FOR EJECTMENT

APPLICANT: Albert H. Balkwill  
427 E. Monterey Avenue  
Stockton, California 95204

AREA, TYPE LAND AND LOCATION:  
A parcel of tide and submerged land offshore  
of Fig Island in Potato Slough, San Joaquin  
County.

LAND USE: Trespass.

BACKGROUND: The Division received Department of the Army,  
Corps of Engineer's Violation Report #VR-1-004,  
dated February 28, 1975, regarding six floating  
structures constructed without permit in Potato  
Slough adjacent to Fig Island, Assessor's Parcel  
Number 069-030-45, San Joaquin County. Investi-  
gation by the Division determined that the  
structures also occupied State land for which  
no permit had been issued. Applicant was so  
advised by letter dated March 21, 1975. Appli-  
cant was also advised that his structures were  
in trespass and must be brought under permit or  
he would become subject to ejectment proceedings.  
The following State agencies objected to the  
issuance of a Corps of Engineer's Permit for the  
subject facilities: Department of Navigation  
and Ocean Development, Department of Parks  
and Recreation, State Water Resources Control  
Board, State Lands Division. Above agencies  
through the Resources Agency submitted their  
objections to the Corps of Engineers by letter  
dated June 25, 1975. By a letter dated  
December 4, 1975, sent certified to the applicant  
the Division stated that having received no  
response from applicant, that letter would be  
final notice before the State Lands Commission  
would consider beginning ejectment proceedings.  
Division received a letter from the applicant  
dated December 26, 1975, in which applicant  
stated that it was his belief that all structures  
constructed off Fig Island were on land owned  
by applicant. Applicant stated that due to  
erosion it was his feeling that the island had  
been reduced in size and therefore all structures  
now constructed over Potato Slough were, in fact,  
constructed on property under his ownership.  
The Division replied by a letter dated January  
8, 1976, after further study of the subject

CALENDAR ITEM NO. 22. (CONTE)

area, that all facilities extended out onto sovereign land and did not occupy property owned by applicant. By letter dated February 3, 1976, applicant's attorney notified Division and submitted for Division's consideration a patent purportedly to cover the portion of Fig Island occupied by applicant. The attorney stated that he felt the patent superseded any requirements of the Division pertaining to permit for the existing structures. Applicant's attorney was notified that the patent would be submitted to our Title Unit for further study, and that applicant would be notified by us upon completion of the study of this patent and its possible effect on Division's requirements concerning permit or lease covering floating docks adjacent to Fig Island. In May 1976, the Division received Department of the Army, Corps of Engineers Public Notice No. 76-5917 covering facilities presently existing adjacent to Fig Island. Division notified Corps of Engineers through the Resources Agency that applicant had contested our jurisdiction of the area and pending our completion of an investigation of his claims, that we requested that approval of a Corps of Engineers permit covering the facilities adjacent to Fig Island be held in abeyance. By the Division's letter dated June 16, 1976, applicant's attorney was notified that we had completed our investigation of the patent purportedly covering Fig Island and also a quiet title action begun by applicant against the then present owners and informed applicant's attorney that the State's claim was valid based on the assertion that Fig Island had been historically tide and submerged land and could have not have been validly conveyed by a patent nor was the State of California named as a party to the quiet title action begun by the applicant, and again requested that an application for maintenance of the existing structures be submitted to this Division.

CURRENT SITUATION:

Applicant has been granted a conditional use permit from the County of San Joaquin to maintain two of the six floating dock structures located adjacent to Fig Island, providing that the area should not be used for commercial purposes and that applicant remove the additional four floating dock facilities. The Division by its letter of August 26, 1976 to the Planning Department of the County of San Joaquin, concurred in the above provided that applicant

CALENDAR ITEM NO. 22. (CONTD)

secure appropriate permit from the Division. By Division's letter dated January 7, 1977, permit certified to the applicant, applicant was notified by Division had received notice from the County of the issuance to applicant of the conditional use permit for his continued maintenance of two pier structures projecting from Fig Island into Potato Slough. Division again requested that applicant complete and forward an application for appropriate permit to the Division. Applicant's attorney by letter dated January 31, 1977, notified the Division that applicant still contends that his facilities occupy land under his ownership and that applicant has not changed his position regarding the Division's request that he bring his facilities under permit.

IT IS RECOMMENDED THAT THE COMMISSION AUTHORIZE THE STAFF OF THE STATE LANDS DIVISION AND/OR THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL STEPS NECESSARY, INCLUDING LITIGATION, IN ORDER TO ELIMINATE THE CONTINUED TRESPASS OF ALBERT H. BALKWILL FROM STATE-OWNED TIDE AND SUBMERGED LAND ADJACENT TO FIG ISLAND IN POTATO SLOUGH, SAN JOAQUIN COUNTY.

EXHIBIT: A. Location Map.