

This Calendar Item No. 20  
was by 3  
No. 20  
Committee 3  
to 0 at its 3/31/77  
meeting

MINUTE ITEM

3/31/77  
RH

20. POLICY CONCERNING GRANTING OF LEASES AND PERMITS BETWEEN THE ORDINARY HIGH WATER AND LOW WATER MARKS ON NAVIGABLE LAKES AND NONTIDAL, NAVIGABLE RIVERS - W 396.612.

During consideration of Calendar Item 20 attached, Mr. Jan Stevens, Deputy Attorney General briefly explained the item. He further stated that the revision was due to the restraining order that was issued with respect to the boundary issue.

Mr. Gordon Hodel appeared in pro per, verifying what the changes in the Recommendation were.

Upon motion duly made and carried the following resolution was adopted as amended by a vote of 3-0:

THE COMMISSION:

1. ADOPT THE FOLLOWING POLICY FOR THE GRANTING OF LEASES AND PERMITS BETWEEN THE ORDINARY HIGH WATER AND LOW WATER MARKS ON INLAND NONTIDAL, NAVIGABLE WATERS:

PENDING RESOLUTION OF THE QUESTION OF THE ACTUAL BOUNDARY OF THE STATE'S SOVEREIGN OWNERSHIP OF THE LANDS UNDERLYING INLAND NONTIDAL, NAVIGABLE WATERS, THE STATE LANDS COMMISSION WILL, FOR SUCH LANDS:

- A. REQUIRE NEW LEASES AND PERMITS ONLY FOR THOSE STRUCTURES OR USE AREAS WHICH STAND OR EXTEND WATERWARD OF THE ORDINARY LOW WATER MARK. NOTICES OF THE STATE'S POSITION SHALL BE GIVEN TO PARTIES CONSTRUCTING SUCH STRUCTURES OR USE AREAS BETWEEN THE ORDINARY HIGH AND LOW WATER MARKS AND SUCH PARTIES SHALL ACKNOWLEDGE RECEIPT THEREOF. IN THE EVENT THE STATE'S POSITION IS SUSTAINED, ALL PARTIES WITH STRUCTURES OR USE AREAS LANDWARD OF THE ORDINARY LOW WATER MARK SHALL BE REQUIRED TO ENTER INTO APPROPRIATE LEASES OR PERMITS WITH THE STATE. THE COMMISSION EXPRESSLY RESERVES THE RIGHT, HOWEVER, TO TAKE SUCH ACTION AS IT CONSIDERS NECESSARY AND PROPER TO PRESERVE, PROTECT AND ENHANCE THE PUBLIC TRUST FOR COMMERCE, NAVIGATION AND FISHERIES AS TO ANY AREA WATERWARD OF THE ORDINARY HIGH WATER MARK AND WILL REVIEW ALL PROJECTS TO DETERMINE WHETHER THEY ARE CONTRARY TO THE PUBLIC TRUST INTEREST.
- B. RENTAL FEES FOR NEW LEASES AND PERMITS WHICH ARE DETERMINED UPON APPRAISED VALUE OF LAND OR SQUARE FOOTAGE WITHIN THE PERMIT AREA, SHALL BE DETERMINED SEPARATELY FOR THE AREAS LANDWARD AND WATERWARD OF THE ORDINARY LOW WATER MARK. PAYMENT OF RENTAL SHALL ONLY BE REQUIRED FOR THAT PORTION OF A LEASE OR PERMIT WHICH EXTENDS WATERWARD OF THE ORDINARY LOW WATER MARK. PAYMENT OF RENTAL FOR THAT PORTION OF A LEASE OR PERMIT

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LANDWARD OF THE ORDINARY LOW WATER MARK SHALL BE DEFERRED UNTIL RESOLUTION OF THE QUESTION OF THE EXTENT OF THE STATE'S OWNERSHIP; HOWEVER, IN THE EVENT ANY MONIES ARE RECEIVED WHICH ARE ATTRIBUTABLE TO SUCH PORTION OF A LEASE OR PERMIT, SUCH MONIES SHALL BE IMPOUNDED UNTIL THE BOUNDARY OF THE STATE'S OWNERSHIP HAS BEEN DETERMINED.

- C. THIS POLICY SHALL ALSO APPLY TO THE RENEWAL OF OUTSTANDING LEASES AND PERMITS DURING THE PERIOD PRIOR TO RESOLUTION OF THE BOUNDARY OF THE STATE'S OWNERSHIP.
2. AUTHORIZES THE EXECUTIVE OFFICER TO GIVE APPROPRIATE NOTICES, INCLUDING BUT NOT LIMITED TO NOTICES THAT THE STATE CLAIMS OWNERSHIP OF THE BEDS OF ALL INLAND NONTIDAL NAVIGABLE WATER LANDWARD TO THE ORDINARY HIGH WATER MARK.
  3. AUTHORIZES THE STAFF TO MAKE AND MAINTAIN SUCH RECORDS AS ARE NECESSARY AND PROPER TO AN INVENTORY AND OWNERSHIP OF STRUCTURES AND USE AREAS WHICH ARE NOW EXISTING OR ARE HEREAFTER CONSTRUCTED IN THE AREA BETWEEN THE ORDINARY HIGH AND ORDINARY LOW WATER MARKS ON PROPERTY AFFECTED BY THIS BOUNDARY QUESTION.

THE ADOPTION OF THIS POLICY IS NOT AND SHALL NOT BE CONSIDERED TO BE A WAIVER BY THE STATE OF ITS CLAIM THAT THE BOUNDARY OF THE STATE'S FEE TITLE OWNERSHIP OF INLAND NONTIDAL NAVIGABLE WATER IS THE ORDINARY HIGH WATER MARK, NOR ANY ADMISSION THAT SAID BOUNDARY IS AT ANY LOCATION OTHER THAN THE ORDINARY HIGH WATER MARK.

Attachment: Calendar Item 20 (3 pages)

POLICY CONCERNING GRANTING OF LEASES AND PERMITS  
BETWEEN THE ORDINARY HIGH WATER AND LOW WATER MARKS  
ON NAVIGABLE LAKES AND NONTIDAL, NAVIGABLE RIVERS

On March 8, 1977, in response to his prior request, the Executive Officer received a letter from the Attorney General discussing the legal position which is being taken on the Commission's behalf in pending litigation involving the legal boundaries of, and public rights in, inland nontidal navigable waters. Each Commissioner has received a copy of this letter.

The legal position discussed in the letter may be summarized in the following manner:

1. In general, the State of California's sovereign ownership of lands underlying inland nontidal navigable waters extends landward to the ordinary high water mark.
2. Irrespective of whether the State's title to such lands extends landward to that line or merely to the ordinary low water mark, the strip of lands between the two lines is subject to the common-law public trust for commerce, navigation and fisheries.
3. Independently of the common-law public trust, members of the public have the right to use inland nontidal navigable waters lying waterward of the ordinary high water mark for fishing and other recreational purposes regardless of the ownership of the underlying lands if such waters are capable of being navigated by small boats.

However, because of the serious questions presented by the extent of the State's landward fee title interest, the Attorney General has recommended the following course of action:

1. Pending a definitive resolution of the water boundary question, the Commission (a) should refrain from requesting private parties to enter into new leases for existing improvements landward of the ordinary low water mark, and (b) should excuse all payments otherwise due under present leases of lands between the ordinary high water and ordinary low water marks of inland nontidal navigable waters.

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2. Notice should be given to presently or potentially affected private upland owners and members of the general public with respect to the State's position in pending litigation.

IT IS RECOMMENDED THAT THE COMMISSION:

1. ADOPT THE FOLLOWING POLICY FOR THE GRANTING OF LEASES AND PERMITS BETWEEN THE ORDINARY HIGH WATER AND LOW WATER MARKS ON INLAND NONTIDAL, NAVIGABLE WATERS:

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A. REQUIRE NEW LEASES AND PERMITS ONLY FOR THOSE STRUCTURES OR USE AREAS WHICH STAND OR EXTEND WATERWARD OF THE ORDINARY LOW WATER MARK. NOTICES OF THE STATE'S POSITION SHALL BE GIVEN TO PARTIES CONSTRUCTING SUCH STRUCTURES OR USE AREAS BETWEEN THE ORDINARY HIGH AND LOW WATER MARKS AND SUCH PARTIES SHALL ACKNOWLEDGE RECEIPT THEREOF. IN THE EVENT THE STATE'S POSITION IS SUSTAINED, ALL PARTIES WITH STRUCTURES OR USE AREAS LANDWARD OF THE ORDINARY LOW WATER MARK SHALL BE REQUIRED TO ENTER INTO APPROPRIATE LEASES OR PERMITS WITH THE STATE. THE COMMISSION EXPRESSLY RESERVES THE RIGHT, HOWEVER, TO TAKE SUCH ACTION AS IT CONSIDERS NECESSARY AND PROPER TO PRESERVE, PROTECT AND ENHANCE THE PUBLIC TRUST FOR COMMERCE, NAVIGATION AND FISHERIES AS TO ANY AREA WATERWARD OF THE ORDINARY HIGH WATER MARK AND WILL REVIEW ALL PROJECTS TO DETERMINE WHETHER THEY ARE CONTRARY TO THE PUBLIC TRUST INTEREST.

B. RENTAL FEES FOR NEW LEASES AND PERMITS WHICH ARE DETERMINED UPON APPRAISED VALUE OF LAND OR SQUARE FOOTAGE WITHIN THE PERMIT AREA, SHALL BE DETERMINED SEPARATELY FOR THE AREAS LANDWARD AND WATERWARD OF THE ORDINARY LOW WATER MARK. PAYMENT OF RENTAL SHALL ONLY BE REQUIRED FOR THAT PORTION OF A LEASE OR PERMIT WHICH EXTENDS WATERWARD OF THE ORDINARY LOW WATER MARK. PAYMENT OF RENTAL FOR THAT PORTION OF A LEASE OR PERMIT LANDWARD OF THE ORDINARY LOW WATER MARK SHALL BE DEFERRED UNTIL RESOLUTION OF THE QUESTION OF THE EXTENT OF THE STATE'S OWNERSHIP; HOWEVER, IN THE EVENT ANY MONIES ARE RECEIVED WHICH ARE ATTRIBUTABLE TO SUCH PORTION OF A LEASE OR PERMIT, SUCH MONIES SHALL BE IMPOUNDED UNTIL THE BOUNDARY OF THE STATE'S OWNERSHIP HAS BEEN DETERMINED.

- C. THIS POLICY SHALL ALSO APPLY TO THE RENEWAL OF OUTSTANDING LEASES AND PERMITS DURING THE PERIOD PRIOR TO RESOLUTION OF THE BOUNDARY OF THE STATE'S OWNERSHIP.
2. AUTHORIZE THE EXECUTIVE OFFICER TO GIVE APPROPRIATE NOTICES, INCLUDING BUT NOT LIMITED TO NOTICES RECORDED IN THE OFFICIAL RECORDS IN EACH OF THE COUNTIES IN WHICH ARE LOCATED ANY LANDS OF THE CHARACTER WHICH ARE THE SUBJECT OF THIS POLICY, THAT THE STATE CLAIMS OWNERSHIP OF THE BEDS OF ALL INLAND NONTIDAL NAVIGABLE WATER LANDWARD TO THE ORDINARY HIGH WATER MARK.
  3. AUTHORIZE THE STAFF TO MAKE AND MAINTAIN SUCH RECORDS AS ARE NECESSARY AND PROPER TO AN INVENTORY AND OWNERSHIP OF STRUCTURES AND USE AREAS WHICH ARE NOW EXISTING OR ARE HEREAFTER CONSTRUCTED IN THE AREA BETWEEN THE ORDINARY HIGH AND ORDINARY LOW WATER MARKS ON PROPERTY AFFECTED BY THIS BOUNDARY QUESTION.

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