

MINUTE ITEM

11/78
W 503.976

EXECUTIVE SESSION - UNITED STATES v. KNAPPTON TOW BOAT CO.
AND THE STATE OF WASHINGTON

The attached calendar item was heard in Executive Session and was approved by a vote of 3-0.

Attachment: Calendar Item (2 pages)

EXECUTIVE SESSION

DRAFT CALENDAR ITEM

RATIFICATION OF ACTION OF THE ATTORNEY GENERAL IN FILING AMICUS CURIAE BRIEF ON BEHALF OF THE STATE LANDS COMMISSION IN UNITED STATES v. KNAPPTON TOWBOAT CO. AND THE STATE OF WASHINGTON, (Ninth Circuit Court of Appeals Nos. 77-1557 & 77-2215).

Currently pending in the United States Court of Appeals for the Ninth Circuit is a federal condemnation case, United States v. Knappton Towboat Co. and the State of Washington (9th Cir. Nos. 77-1557 & 77-2215), which involves an issue of great importance to the State of California and the State Lands Commission. At issue is the extent of the federal government's right, pursuant to exercise of the "navigational servitude," to condemn lands in navigable waterways without payment of compensation. If the arguments of the federal government on appeal are accepted by the court, the number of instances in which the State and its lessees would be deprived of compensation for the taking of sovereign lands would be greatly increased.

In short, the federal government argues that the no-compensation rule for federal projects in navigable waterways applies not only to federal projects in furtherance of navigation, but also to projects which are undertaken to further purposes within the scope of the commerce clause generally. Under the federal government's theory, for instance, the United States could take sovereign land for an improvement such as a customs house without compensating the State, even though placement of such an improvement in a navigable waterway would actually impede navigation. The United States also argues that the

Corps of Engineers may validly condition its permits for public and private structures in navigable waters so as to exempt the federal government from later having to pay compensation for the taking of such improvements, as long as the project is "in the public interest," independent of whether it furthers navigation. If successful, both arguments could have serious fiscal impact on the State of California.

Late in August, the State of Washington requested that the State of California file an amicus curiae brief in support of their position against the federal government. The record in the case was not received for review by the Attorney General's Office until October 16, 1978. After a review of the record and of the applicable law, the Attorney General's Office, in conjunction with the Commission's staff, determined that the requested amicus brief should be filed. Because oral argument in the case was scheduled for November 9, 1978, it was not possible to obtain the prior authorization of the Commission for the filing of the brief. The brief was mailed for filing on November 6, 1978.

IT IS RECOMMENDED THAT:

THE STATE LANDS COMMISSION RATIFY THE ACTION OF THE ATTORNEY GENERAL IN FILING AN AMICUS CURIAE BRIEF ON BEHALF OF THE STATE LANDS COMMISSION IN UNITED STATES v. KNAPTON TOWBOAT CO. AND THE STATE OF WASHINGTON (Ninth Circuit Court of Appeals Nos. 77-1557 & 77-2215).