

MINUTE ITEM

This Calendar Item No. 12
was approved as Minute Item
No. 12 by the State Lands
Commission by a vote of 3
to 0 at its 12/20/84
meeting.

MINUTE ITEM

17.

12/20/84
W 503.794
W 503.795
W 503.796
W 503.797
SLL 117
Flushman
Frey

LESLIE SALT vs. STATE OF CALIFORNIA, EX REL.
STATE LANDS COMMISSION,
TITLE & BOUNDARY LITIGATION SETTLEMENT

During consideration of Calendar Item 12 attached, Ms. Barbara Shockley, Citizens Advisory Committee, Hayward Area Shoreline Planning Agency, and Mrs. Janice Delfino, Save San Francisco Bay Association and the Hayward Area Shoreline Planning Agency, appeared to ask the Commission to delay the decision on this item to allow the citizens of Hayward and other interested persons more time to review the proposed settlement. Both Ms. Shockley and Mrs. Delfino had questions about and objections to the proposed settlement. All questions and objections were answered and taken into consideration.

Mr. Ned Washburn, Washburn & Kemp, attorneys for Leslie Salt, appeared to urge the Commission to go forth with the settlement as it was in the best interests of all parties concerned. Mr. Washburn also pointed out that the settlement had been widely publicized in the Bay Area and that staff had made special efforts to meet with concerned citizens' groups.

Chairman Cory explained the purpose of the settlement as relating to ownership interests only. Any proposed or future use of the lands would be subject to regulatory agencies claiming authority or jurisdiction over the lands.

Upon motion duly made by Commission-Alternate Ordway and seconded by Commission-Alternate Wallace, the resolution in Calendar Item 12 was approved as presented by a vote of 3-0.

Attachment: Calendar Item 12

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CALENDAR ITEM

A 14
S 10

12

12/20/84
W 503.794
W 503.795
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LESLIE SALT vs. STATE OF CALIFORNIA, EX REL.
STATE LANDS COMMISSION,
TITLE & BOUNDARY LITIGATION SETTLEMENT

This case concerns the title to and boundary of approximately 1700 acres of former San Francisco Bay salt marsh lands that lie immediately south of the eastern end of the Hayward Bridge. These lands are now largely in salt production.

Title History

Between 1858 and 1895 the State of California issued a series of swamp and overflowed or tideland patents to Leslie's predecessors in interest. Such patents purported to convey the State of California's interest in the disputed lands including, in some cases, any navigable and tidal waters which flowed in and through the salt marsh of which the lands in dispute were then comprised. By about 1900, Leslie or its predecessors had reclaimed most of the lands.

This reclamation found its purpose in the Arkansas Swamp Act, enacted to grant swamp and overflowed lands to the States for the purpose of facilitating reclamation through the construction of levees and drains. Beginning in the early years of statehood, the California Legislature adopted acts authorizing the sale and reclamation of then swamp and overflowed lands. The disputed lands were reclaimed by Leslie and its predecessors as part of this program. Salt production facilities, including levees, have been built. These improvements were in aid of reclamation, flood control protection and commerce. Jobs, production of needed salt for agricultural and industrial uses and mosquito abatement were additional benefits.

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The State of California acquired the tidelands within its borders upon becoming a State by reason of its sovereignty. Swamp and overflowed lands were granted to the State of California by the United States on September 28, 1850. Generally, tidelands are subject to the public trust; swamp and overflowed are not.

In the late 19th century, after the State of California issued swamp and overflowed or tideland patents for portions of the disputed lands such lands were identified and patented as swamp and overflowed lands by the United States to the State of California. Also in the 1920's the State Surveyor General requested the United States to identify and patent to the State of California as swamp and overflowed almost all of the remaining portions of the disputed lands. The United States refused such request. In 1967, after consultation with Leslie, the Commission again requested the United States to identify and convey as swamp and overflowed such remaining part of the disputed lands. This second request was also rejected.

Thus, in portions of the areas that had been identified and patented as swamp and overflowed by the United States to the State of California, the State of California had issued both swamp and overflowed and tideland patents to Leslie's predecessors. In the remaining portion of the disputed lands, the United States had twice refused to issue swamp and overflowed patents to the State of California even though the State of California had earlier patented all of such remaining lands to private purchasers as swamp and overflowed lands.

History of This Litigation

Leslie commenced this litigation in 1975. In its lawsuit Leslie brought into issue title to approximately 700 acres of the disputed lands. Shortly thereafter the Commission cross-complained. In addition the Commission filed three other separate actions which brought into issue all of the now disputed lands.

A related lawsuit was filed by Leslie in federal court. In that case Leslie sought to compel the United States to issue a swamp and overflowed patent to the State of California for the unpatented lands. That case was resolved by stipulation. By stipulation the Commission and Leslie agreed that absence of a federal swampland patent would not constitute a defect in Leslie's title so long as Leslie made the showing required by applicable law.

Since 1979 the Commission, through counsel, sought to narrow the issues for trial. Extensive discovery was conducted by both Leslie and the Commission. Experts were retained and examined. Investigation of the legal and physical character of the disputed land was exhaustive.

Shortly before trial was to commence, at a pretrial conference the trial judge, Judge M. O. Sabraw, asked counsel whether settlement was still possible. Although settlement discussions had been undertaken since 1975, without positive result, counsel for both parties agreed to again explore settlement possibilities with retired Judge Robert L. Bostick retained to facilitate the discussion. Principals and their counsel met twice in late November 1983 and reached the following agreement subject to Commission approval.

The Tentative Settlement

The Commission will receive, in fee simple absolute, title to the bed of Mount Eden Creek in approximately the area shown as Parcel "D" on the map attached as Exhibit "A". The title is subject to two easements for crossings in favor of Leslie. The easements may not interfere with the Commission's access over, across, on or upon Parcel "D". The Commission will also receive fee title to 153 acres of Leslie's most westerly salt pond that lies north of Mount Eden Creek as shown as Parcel "C" on Exhibit "A". Such fee title is subject to certain rights and easements reserved by Leslie for salt-making purposes. Such rights are agreed to be held free of the public trust. The parties have agreed on and Leslie will confirm an additional area subject to the State of California's public trust easement. Said additional area is shown as Parcel "A" on Exhibit "A". Title to the presently existing marsh included within Parcel "B" on Exhibit "A" will not be resolved in this settlement. Leslie's title to the disputed lands encompassed within Parcel "E" on Exhibit "A" will be confirmed free of the public trust by the Commission. Leslie will also receive a Correctory Tideland Patent to a portion of Parcel "A". Such Correctory Tideland Patent recognizes that the character of the land encompassed in said patent was misdesignated as swamp and overflowed land by the original State of California patent.

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This settlement only resolves title and boundary questions and will not affect the jurisdiction or authority of any other agency.

OTHER PERTINENT INFORMATION:

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Adm. Code 15061), the staff has determined that this activity is exempt from CEQA as a statutorily exempt project. The project is exempt because it involves settlement of title and boundary problems (P.R.C. 21080.11).

EXHIBIT: A. Plat of Settlement Parcels.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. ADM. CODE 15061 AS A STATUTORILY EXEMPT PROJECT PURSUANT TO PUBLIC RESOURCES CODE SECTION 21080.11, SETTLEMENT OF TITLE AND BOUNDARY PROBLEMS.
2. APPROVE AND FIND THE PROPOSED LITIGATION SETTLEMENT AGREEMENT SUBJECT TO APPROVAL BY THE ALAMEDA COUNTY SUPERIOR COURT, A COPY OF WHICH IS ON FILE IN THE OFFICES OF THE STATE LANDS COMMISSION, IS IN THE BEST INTERESTS OF THE STATE OF CALIFORNIA.
3. MAKE THE FOLLOWING FINDINGS PURSUANT TO P.R.C. SECTION 6307:
 - a. TO THE EXTENT THAT THE LANDS DESIGNATED AS PARCEL "E" ON EXHIBIT "C" TO THE SETTLEMENT AGREEMENT ON FILE IN THE OFFICE OF THE COMMISSION WERE EVER TIDE OR SUBMERGED LANDS, SUCH LANDS HAVE BEEN IMPROVED AND RECLAIMED, HAVE BEEN EXCLUDED FROM THE PUBLIC CHANNELS AND ARE NO LONGER AVAILABLE OR USEFUL OR SUSCEPTIBLE OF BEING USED FOR NAVIGATION AND FISHING AND ARE NO LONGER IN FACT TIDE OR SUBMERGED LANDS;
 - b. THAT THE LANDS IN SAID PARCEL "E" HAVE BEEN RECLAIMED PURSUANT TO AND IN THE COURSE OF A HIGHLY BENEFICIAL PUBLIC PROGRAM OF RECLAMATION WHICH HAS SUBSTANTIALLY BENEFITED NAVIGATION AND COMMERCE;

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- c. THAT THE LANDS IN SAID PARCEL "E" CONSTITUTE A RELATIVELY SMALL PART OF THE TOTAL ACREAGE THAT ONCE CONSTITUTED THE SALT MARSH OF SAN FRANCISCO BAY;
- d. THAT VALUE OF THE INTERESTS ACQUIRED BY THE COMMISSION IN PARCELS "A", "C" AND "D" ON SAID EXHIBIT "C" BY VIRTUE OF SAID SETTLEMENT AGREEMENT ARE EQUAL TO OR GREATER THAN THE VALUE OF THOSE INTERESTS GRANTED OR RELINQUISHED BY THE COMMISSION TO LESLIE SALT;
- e. THAT UPON EXECUTION AND RECORDATION OF SAID SETTLEMENT AGREEMENT, THE PUBLIC TRUST FOR COMMERCE, NAVIGATION AND FISHERY OF THE LANDS IN PARCEL "E" SHALL BE TERMINATED AND THE LANDS IN SAID PARCEL "E" SHALL BE HELD FREE OF THE PUBLIC TRUST FOR COMMERCE, NAVIGATION AND FISHERY;
- f. THAT UPON EXECUTION AND RECORDATION OF THIS SETTLEMENT AGREEMENT, TO THE EXTENT THAT THE SETTLEMENT AREA, AS DESCRIBED IN SAID SETTLEMENT AGREEMENT WAS SUBJECT TO THE ADMINISTRATION, CONTROL AND DISPOSITION OF THE COMMISSION THE LANDS AND INTERESTS RECEIVED BY THE COMMISSION FROM LESLIE SALT IN SAID PARCELS "A", "C" AND "D" HAVE THE SAME STATUS AS TO ADMINISTRATION, CONTROL AND DISPOSITION AS THE LANDS AND INTERESTS FOR WHICH THEY WERE EXCHANGED HAD;
- g. THAT TO THE EXTENT THAT LESLIE SALT EXCEPTS AND RESERVES CERTAIN RIGHTS AND INTERESTS IN, OVER AND ON THE LANDS DESIGNATED AS PARCEL "C" ON EXHIBIT "C" AND MORE PARTICULARLY DESCRIBED IN EXHIBIT "C-3" ATTACHED HERETO AND INCORPORATED HEREIN BE REFERENCE, THE COMMISSION FINDS THAT THE LANDS IN WHICH SUCH RIGHTS EXIST HAVE BEEN IMPROVED AND RECLAIMED, AND HAVE THEREBY BEEN EXCLUDED FROM THE PUBLIC CHANNELS BY LESLIE SALT AND ITS PREDECESSORS IN INTEREST, THAT SUCH RIGHTS AND INTERESTS ARE NO LONGER USEFUL OR SUSCEPTIBLE OF BEING USED FOR NAVIGATION OR FISHING AND ARE NO LONGER IN FACT RIGHTS AND INTERESTS IN TIDELANDS AND SUBMERGED LANDS; AND THEREFORE, IN FURTHERANCE OF A HIGHLY BENEFICIAL PROGRAM OF RECLAMATION WHICH HAS SUBSTANTIALLY BENEFITED NAVIGATION AND COMMERCE, UPON EXECUTION AND RECORDATION OF THIS SETTLEMENT AGREEMENT, SUCH RIGHTS AND INTERESTS ARE FREED FROM SUCH PUBLIC TRUST THAT THE EXECUTION, ACKNOWLEDGEMENT AND RECORDATION ON BEHALF OF THE COMMISSION OF THIS SETTLEMENT AGREEMENT IS APPROVED AND AUTHORIZED;

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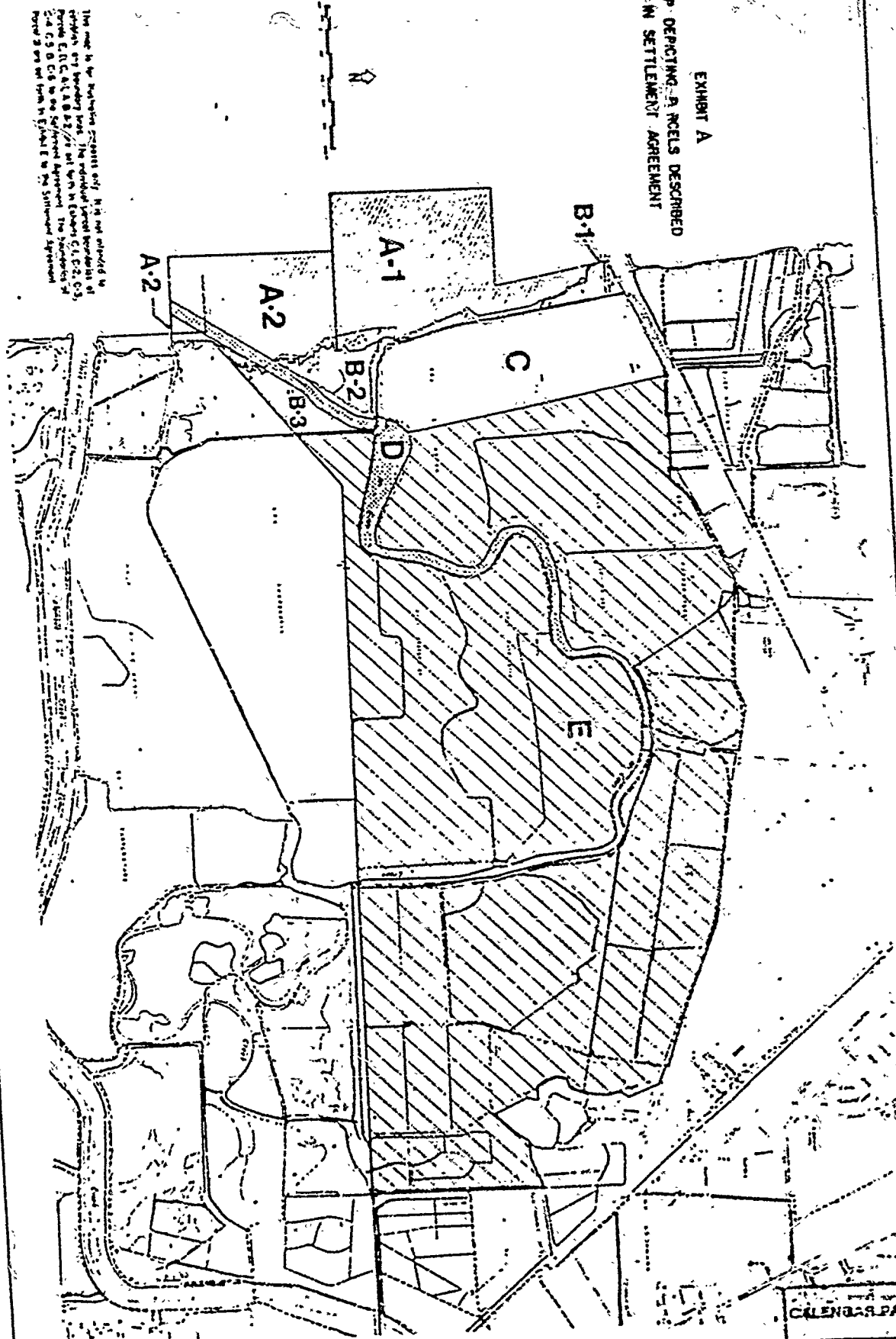
- h. THAT THE ACCEPTANCE AND RECORDATION ON THE STATE OF CALIFORNIA'S BEHALF OF THE CONVEYANCES BY LESLIE SALT SET FORTH IN PARAGRAPHS 4.2.2 AND 4.3.3, AND 4.3.5 OF SAID SETTLEMENT AGREEMENT IS APPROVED AND CONSENTED TO; AND
 - i. THAT THE SETTLEMENT OF THE PENDING LITIGATION IN THE MANNER DESCRIBED IN SAID SETTLEMENT AGREEMENT IS APPROVED AND IS IN THE BEST INTERESTS OF THE STATE OF CALIFORNIA.
 - j. THAT THE ABOVE FINDINGS BY THE COMMISSION ARE NOT INTENDED TO AND DO NOT AFFECT THE AUTHORITY OR JURISDICTION OR EXTENT OF REGULATION OR CONTROL, IF ANY, OF ANY REGULATORY AGENCY THAT CLAIMS TO HAVE AUTHORITY OR JURISDICTION OVER THE LANDS THAT ARE THE SUBJECT OF THE SETTLEMENT AGREEMENT BASED ON STATUTE, ADMINISTRATIVE REGULATION OR LAW.
4. AUTHORIZE EXECUTION OF AND DELIVERY INTO ESCROW OF A MINUTE ITEM EVIDENCING THE APPROVAL OF THE COMMISSION OF THE SETTLEMENT AGREEMENT AND ACCEPTANCE OF THE QUITCLAIMS DEEDS PROVIDED FOR IN THE SETTLEMENT AGREEMENT; AND
5. AUTHORIZE THE EXECUTIVE OFFICER OR HER DESIGNEE AND THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL STEPS WHICH THEY DEEM NECESSARY OR APPROPRIATE TO EFFECTUATE THE PROPOSED SETTLEMENT AGREEMENT, INCLUDING ACCEPTANCE OF QUITCLAIM DEEDS.

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EXHIBIT A
 MAP DEPICTING A CELLS DESCRIBED
 IN SETTLEMENT AGREEMENT



This map is for reference purposes only. It is not intended to
 replace any boundary lines. The recorded parcel boundaries of
 Parcel C.U.C. 41, A.B. 51/79 are set forth in Order C.U.C. 23,
 24, C.S. 008 to the Settlement Agreement. The boundaries of
 Parcel 2 are set forth in Exhibit B to the Settlement Agreement.

EXHIBIT "A"

(ADDED 12/12/84)

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