

CALENDAR ITEM

41

A Statewide

01/29/09

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PROPOSED LEGISLATION

INTRODUCTION:

State Lands Commission staff has been working on various legislative proposals for 2009. The legislative proposals that are explained below have been developed to the point where it would be appropriate for the Commission to consider taking official positions on them. For each legislative proposal, staff has provided a recommendation on what position it thinks the Commission should take. Staff is currently working on other legislative proposals, which it may present to the Commission at future meetings.

LEGISLATIVE PROPOSALS:

1. Abandoned Vessels (Administrative Authority)

SUMMARY:

This legislative proposal would amend the Public Resources Code to create an administrative process that gives the Commission the ability to remove and dispose of abandoned vessels, trespassing vessels, and trespassing ground tackle. Currently, the only recourse the Commission has to address this issue is to file an action in court, which is time consuming and costly.

IDENTIFICATION OF PROBLEM:

There are a number of boat owners that are storing their vessels on state lands without permission. There are also boat owners that are dumping or abandoning their old or unseaworthy vessels on state lands without permission. The problem of trespassing and abandoned vessels is increasing in the state and there is evidence to suggest that it will only get worse in a down economy where the costs of vessel maintenance and storage become the first discretionary

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expenses to be eliminated. The problem is particularly acute in the Sacramento Delta, but is also evident throughout the state and country's waterways.

The Commission's current recourse against these boat owners is limited to court action. This is usually a long and costly process that involves the Attorney General's office. There have been some situations where ship salvors have offered to take trespassing and abandoned ships at no cost to the state; however, since the ship salvors cannot obtain title without a court judgment, this remedy has not proven effective.

PROPOSED SOLUTION:

Amend the Public Resources Code to streamline the lengthy and expensive judicial process by permitting the Commission to decide the final disposition of abandoned vessels, trespassing vessels, and trespassing ground tackle through an administrative process. This administrative authority would include notice and hearing requirements to protect the due process rights of boat owners. Specifically, a boat owner would receive a 30 day notice to remove and an opportunity to be heard by the Commission before final disposition would occur. If the Commission ultimately decides to dispose of or destroy a vessel, the Commission shall provide an additional 30 day notice to the boat owner before it can take such action.

RECOMMENDED ACTION:

It is recommended that the Commission sponsor this legislative proposal with the right to change its position if circumstances change.

2. Abandoned Vessels (Funding)

SUMMARY:

This legislative proposal would require that unspent money granted from the Department of Boating and Waterways to local governments as part of the Abandoned Watercraft Abatement Program be transferred to the Commission for the specific purpose of clearing state owned waterways of (1) hazards to navigation, (2) nuisances involving threats to public or environmental health and safety, (3) trespassing vessels and ground tackle, and (4) abandoned and derelict vessels.

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IDENTIFICATION OF PROBLEM:

The navigable waterways of the State, most of which are under the Commission's jurisdiction, have been cluttered with hazards to navigation, particularly in the Delta. Under certain circumstances, these hazards may injure boaters and/or their property and subject the state to liability. Additionally, navigation is impaired by these hazards, which creates problems to commercial and recreational boaters, as well as to other users of the waterways.

Currently, the Department of Boating and Waterways receives an annual sum not to exceed \$1,000,000 from the Abandoned Watercraft Abatement Fund (a special fund) for grants to local agencies for removal of hazards to navigation. The Abandoned Watercraft Abatement Fund is funded through the Harbors and Watercraft Revolving Fund, which is also a special fund funded mostly through various fees and interests from loans.

The Department of Boating and Waterways' grant program is effective for those local agencies that receive grant money and use it. However, the grant relies on local governments to be proactive in hazard removal. There are several areas in the state where hazards to navigation exist, but local governments, for various reasons, are not applying for grants.

Additionally, many of the local grantees that receive money from the Abandoned Watercraft Abatement Fund do not utilize all of the grant money. In some cases, grantees do not utilize any of the grant money. As such, the grant program does not reach its full potential to clear the state's waterways from these hazards.

PROPOSED SOLUTION:

Allow the Commission to use the grant money that is not spent by the grantees to remove vessels and snags in the state's waterways. From 2003 – 2007, over \$350,000 of grant money from the Abandoned Watercraft Abatement Fund reverted back to the fund because the local grantee did not spend it. By allowing the Commission to utilize this money for clearing the state's waterways, the Abandoned Watercraft Abatement Program becomes more effective and reduces the risks of injury to boaters and the environment as well as potential liability to the state.

RECOMMENDED ACTION:

It is recommended that the Commission sponsor this legislative proposal with the right to change its position if circumstances change.

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3. Mining Leases and Quitclaims

SUMMARY:

This legislative proposal would prevent a quitclaim of a mineral extraction lease from taking effect until reclamation is complete and the Commission formally accepts the quitclaim. The effect of this bill would be that mining lessees would be bound to the terms of their leases and have to continue to pay rent to the state before and during the reclamation process. Depending on the type of land being leased, the additional rent revenue would be deposited into either the California State Teachers' Retirement Fund or the General Fund.

IDENTIFICATION OF PROBLEM:

Pursuant to the Public Resources Code, a state mineral lessee may quitclaim at any time a portion or all of a leasehold, and the quitclaim is effective upon the date of filing. The Commission acceptance of the quitclaim is not required for it to take effect. The quitclaim terminates the lessee's liability to pay rent and its obligation to comply with the lease provisions during the period in which it restores the lease premises. The problem with the current state of affairs is that reclamation of sand and gravel pits and other mining operations can take several years. During this period, the lessee still has a presence on the land and, in some situations, actually uses the land for storage. Meanwhile, the Commission is unable to utilize the land for other revenue generating purposes.

PROPOSED SOLUTION:

Allow a lessee to continue to have the right to quitclaim a portion or all of a lease at its discretion. However, a quitclaim would not be effective until accepted by the Commission and all production facilities have been removed and the lease premises restored. The Commission would be required to accept the quitclaim within two years of when the lease premises are restored.

RECOMMENDED ACTION:

It is recommended that the Commission sponsor this legislative proposal with the right to change its position if circumstances change.

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4. Ballast Water (Regulating Authority)

SUMMARY:

This legislative proposal would extend, until 2014, the Commission's sole authority in the state over discharges or releases of ballast water and other vectors of nonindigenous species from a vessel, unless other action is mandated by federal law.

IDENTIFICATION OF PROBLEM:

The federal courts recently held that the US EPA must regulate incidental discharges from vessels (e.g. ballast water and hull fouling related discharges) pursuant to the Clean Water Act. In February 2009, the Clean Water Act will regulate these types of discharges through a National Pollutant Discharge Elimination System (NPDES) general permit. The Clean Water Act allows states to run their own NPDES permit program and California delegates this authority to the State Water Board through the Porter-Cologne Act.

The Commission has been legislatively regulating ballast water and hull fouling since its nonindigenous species program was created in 1999. The Commission has several scientists and field workers who are experts in the subject of nonindigenous species and who meet regularly with environmentalist, industry, and state agencies to develop policy. Many of the Commission's scientists are invited to speak at national and international events to explain the development of nonindigenous species technology, research, and regulation. No other agency, not even the State Water Board, has the staff and resources dedicated to this issue that the Commission does.

After 2010, the Commission loses its sole authority to determine the requirements of ballast water discharges and hull fouling. It would not be effective to allow other agencies to regulate ballast water and hull fouling because (1) it may lead to conflicting regulations, (2) other agencies do not have the same expertise and resources as the Commission does, and (3) the Commission has an efficient and effective track record and already includes other state agencies in the process of developing regulations.

PROPOSED SOLUTION:

Continue the Commission's role as the sole authority for ballast water and hull fouling regulations in the state until 2014 (i.e. the year the NPDES general permit expires).

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RECOMMENDED ACTION:

It is recommended that the Commission sponsor this legislative proposal with the right to change its position if circumstances change.

5. Ballast Water (Reporting Form)

SUMMARY:

This legislative proposal would require vessels to maintain and retain specific records concerning the use of onboard ballast water treatment systems. Additionally, the bill would require the Commission to adopt reporting and record keeping requirements in anticipation of the implementation of California's performance standards for the discharge of ballast water.

This bill passed last legislative session nearly unanimously; however, it was vetoed because of the historical budget delay.

IDENTIFICATION OF PROBLEM:

The Commission does not currently have the authorization to require vessels to maintain certain records concerning the use of onboard ballast water treatment systems. An expansion of the vessel reporting requirements is necessary for Commission staff to gather information and generate future recommendations regarding the implementation of the performance standards and the evaluation and use of ballast water treatment systems.

PROPOSED SOLUTION:

Allow the Commission to gather information about vessel use of ballast water treatment systems so it can generate future recommendations for the implementation of the performance standards.

RECOMMENDED ACTION:

It is recommended that the Commission sponsor this legislative proposal with the right to change its position if circumstances change.

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6. Land Patents

SUMMARY:

This legislative proposal would allow the Commission to apply for federal patents to school lands where the lands were sold by the State without first having obtained title to them. This bill proposes a technical amendment to Public Resources Code § 6206.5, which did not contemplate a situation where the State sold school lands without first obtaining title.

IDENTIFICATION OF PROBLEM:

Under the 1853 School Lands Grant from the United States, California received from the United States the 16th and 36th sections of every township and range within California. The grant provided that monies derived from the sale or leasing of these lands would be used for the support of the state school system. In the course of the administration of these lands, many of them were sold before California received clear title to them. Under the Commission's current legislative authority (Public Resources Code Section 6206.5), the Commission can apply for federal patents to school lands only where the State has not previously sold the lands in question. In cases where we have asked the United States for a patent for lands previously sold, it has refused to issue one on the grounds that the Commission has no authority to seek one.

This situation was highlighted several years ago when the Commission became involved in litigation before the United States Department of the Interior Board of Land Appeals over ownership of school lands located in Lake County. In the litigation the Commission prevailed in establishing its title but was denied a patent to the lands because the Commission had no statutory authority to apply for one. The amendment of Public Resources Code Section 6206.5 would allow correct this and allow the Commission to apply for a patent regardless of whether the State had previously sold the lands in question.

PROPOSED SOLUTION:

The proposed solution is to amend existing law to provide authority for the Commission to apply for federal patents for school lands regardless of whether the state has previously sold them. The bill seeks to amend Public Resources Code Section 6206.5 by deleting the strike out language in the following paragraph:

The commission is hereby empowered to apply to the United States Department of the Interior for patents to the numbered school sections in place, ~~which have~~

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~~not been patented by the State~~, and to accept patents, in accordance with an act of Congress approved June 21, 1934 (Public No. 440-73d Congress), entitled "An Act Authorizing the Secretary of the Interior to issue patents to the numbered school sections in place, granted to the States by the act approved February 22, 1889, by the act approved January 25, 1927 (44 Stat. 1026) and by any other act of Congress."

RECOMMENDED ACTION:

It is recommended that the Commission sponsor this legislative proposal with the right to change its position if circumstances change.

7. **Port of San Diego (Post Proposition B)**

SUMMARY:

This proposed legislation would clarify the legislative intent behind the state's tideland grant, in trust, to the Port of San Diego by expressly stating that (1) the purposes and uses of the State's public trust lands is a statewide concern, and (2) that local initiatives to amend a grantee or trustee's planning documents or direct the use of trust resources are inconsistent with the public trust.

IDENTIFICATION OF PROBLEM:

In 2008, private developers in San Diego obtained the requisite number of signatures to qualify an initiative for the San Diego County ballot that would amend the Port of San Diego's Master Plan to allow for non-maritime uses at the Tenth Avenue Marine Terminal. The Port of San Diego, the Commission and numerous environmental, labor, maritime industry, governmental, military and chamber of commerce groups argued that the State Legislature, pursuant to the Port Act, specifically designated the Board of Port Commissioners to implement state policy on matters of statewide significance with regard to the management of the State's public trust lands within San Diego Bay and that a local initiative could not circumvent that delegation.

The proposition failed; therefore, the legal issues were never resolved. It is likely that this legal battle will resurface in the future unless the Legislature clarifies its intent.

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PROPOSED SOLUTION:

Include in the Public Resources Code and the Port Act, that, in declaration of existing law, (1) the purposes and uses of public trust lands is a statewide concern, and (2) that local initiatives to amend a grantee or trustee's planning documents or direct the use of trust resources are inconsistent with the public trust.

RECOMMENDED ACTION:

It is recommended that the Commission support this legislative proposal with the right to change its position if circumstances change.