

CALENDAR ITEM

59

A	Statewide	10/22/09
S	Statewide	M. De Bernardo

PROPOSED LEGISLATION

INTRODUCTION:

State Lands Commission staff has been working on various legislative proposals for 2010. The legislative proposals that are explained below have been developed to the point where it would be appropriate for the Commission to consider taking an official position. 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. Trespass on State Lands

SUMMARY:

This legislative proposal would allow the Commission to administratively impose penalties against persons who construct, maintain, own, use, or possess unauthorized structures on state lands. This legislative proposal is modeled after trespass laws and regulations used by the states of New York, Oregon, Texas, and Washington, as well as the California Department of Transportation. Currently, the only recourse the Commission has to address this issue is to file an action in court, which is time consuming, costly, and an ineffective deterrent against future trespasses.

IDENTIFICATION OF PROBLEM:

The Commission regularly deals with situations in which a person constructs, maintains, owns, uses, or possesses a structure on state lands without proper authorization from the Commission. This situation generally arises (1) when the Commission has not issued a lease for the structure, (2) when the Commission has issued a lease, but the structure was built beyond what was authorized, or

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(3) when the structure was authorized by a lease but the lease has not been renewed and is not in holdover.

The Commission's current recourse in the above situations is generally limited to court actions in which the state seeks rent for the use of state lands and/or an order for the structure to be removed. In these cases, litigation can be time consuming and expensive, especially when considering the value of the remedies sought. Additionally, this recourse provides no deterrent against future trespasses because the potential damages against a trespasser are more or less equal to the cost of paying rent under a valid lease.

PROPOSED SOLUTION:

Authorize the Commission to impose fines and to order the removal of unauthorized structures through administrative action. The Commission would be required to provide due process protections to the affected party, which would include proper notice and an opportunity to be heard at a Commission hearing.

RECOMMENDED ACTION:

It is recommended that the Commission sponsor this legislative proposal.

2. Audits

SUMMARY:

This legislative proposal would require the Commission to conduct audits of all of its oil and gas, geothermal, mineral, and dredging leases that produce revenue from public trust lands. Currently, the Commission has 63 of these types of revenue generating leases; however, due to staffing limitations, only 14 leases are audited over a 7 year cycle (the statute of limitations to recover unpaid revenues is only 4 years). Over the past four years, the Commission's audits have resulted in a recovery of more than \$21.9 million to the state, which averages more than \$1.8 million generated by each auditor annually. Commission staff anticipates that if it can audit all of its leases, it will be able to recover even more money for the state. Additionally, these audits will most likely deter lessee from underpaying the state.

IDENTIFICATION OF PROBLEM:

For the 2007-2008 and 2008-2009 fiscal years, the State Lands Commission collected \$361,027,144 and \$289,717,570 respectively in revenue made from oil and gas, geothermal, mineral, and dredging leases on public trust lands. Only 14 out of these 63 revenue generating leases will be audited over a 7 year period due to staffing limitations. As a consequence of letting 46 leases go unaudited, the state is likely to be deprived of a significant amount of revenue.

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Additionally, if the Commission later discovers that an unaudited lessee has been underpaying the state for several years, the Commission will likely have to litigate the matter and bear the time and expense that is associated with such litigation in order to recover its owed revenue. For example, in the recent Hanson litigation, a whistleblower informed the state that the defendant lessees failed to properly calculate royalties on sand mined from leases in the Suisun and San Francisco Bays. The Commission spent years of staff time and over \$140,000 in discovery costs and the Attorney General's Public Rights Division spent over 12,700 hours working on the case. If the leases in the Hanson case were audited on a regular basis, it is likely that the improper royalty calculations would have been discovered early enough to prevent such costly and time-consuming litigation.

PROPOSED SOLUTION:

Require the Commission to adequately staff audits for all oil and gas, geothermal, mineral, and dredging leases that produce revenue from public trust lands. These audits will likely bring millions of dollars to the state and deter lessees from underpaying the state.

RECOMMENDED ACTION:

It is recommended that the Commission sponsor this legislative proposal.

3. Land Bank Fund

SUMMARY:

This legislative proposal would clarify that moneys donated to the Land Bank Fund (aka Kapiloff Land Bank Fund) for management and improvement of public trust lands may be used to provide for public access to trust lands.

IDENTIFICATION OF PROBLEM:

The Land Bank Fund is a fund created by Section 8625 of the Public Resources Code. The fund holds moneys from (1) title settlement agreements, which must be used to purchase interest in "Land Bank Fund" parcels, (2) project applicants who donate the money for mitigation purposes, and (3) other parties that donate money for projects to provide for management and improvement of trust lands.

It is not clearly stated in the Land Bank Fund statute that moneys donated to the fund for management and improvement of public trust lands may be utilized to provide public access to trust lands. This bill would clarify and expressly state that certain moneys in the Land Bank Fund can be used for public access.

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PROPOSED SOLUTION:

Clarify and expressly state that moneys donated to the Land Bank Fund for management and improvement of public trust lands may be used to provide public access to trust lands. Since this legislative proposal provides a noncontroversial, technical amendment, it would most likely be appropriate for an omnibus bill.

RECOMMENDED ACTION:

It is recommended that the Commission sponsor this legislative proposal.