

**CALENDAR ITEM
91**

A: Statewide

01/26/12

S: Statewide

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**CONSIDER SPONSORING OR SUPPORTING LEGISLATION FOR THE SECOND
HALF OF THE 2011-12 STATE LEGISLATIVE SESSION**

INTRODUCTION:

State Lands Commission staff has been working on several legislative proposals for 2012. This report lists each legislative concept with a brief summary and a recommendation for the Commission to consider.

1. Mineral Leases: Quitclaims

SUMMARY:

The Commission sponsored legislation in 2009, AB 368 (Skinner), that would have delayed the effective date of a quitclaim deed filed to terminate an oil, gas, geothermal, or mineral extraction lease with the Commission until the land underlying those operations is reclaimed or restored consistent with existing law. This bill would also have ensured that lessees honor the rent, insurance and bonding requirements of their lease during reclamation, which would have provided some additional revenue and shielded the state from potential liability. AB 368 was vetoed by former Governor Schwarzenegger.

Assemblymember Skinner re-introduced this same legislation on January 4, 2012, which is now AB 1054. AB 1054 was approved by the Assembly Natural Resources and Assembly Appropriation Committees earlier this month and is now on the Assembly floor for consideration.

IDENTIFICATION OF PROBLEM:

Existing law allows a lessee of a state mineral lease to quitclaim, at any time, all or a portion of its lease with the Commission. As a result, certain mining lessees quitclaim their leases once production is over but before reclamation is complete to release themselves of their lease obligations, including the obligation to pay rent to the state and maintain insurance. Reclamation can take years to complete and the Commission cannot lease these lands to other parties or otherwise use them during this period. In addition, the state may be exposed to

liability after a quitclaim because the lessee is no longer required to maintain insurance or surety bonds.

AB 1054 is beneficial for several reasons. First, lessees would have to continue to pay rent before and during the reclamation process, which would increase revenue to the California State Teachers' Retirement Fund for those leases involving state school lands, and potentially the state's General Fund, when state sovereign lands are involved. Second, the state would be shielded from liability because lessees would be complying with the insurance and bonding requirements of their lease during the reclamation period. Third, the bill provides an incentive for lessees to complete necessary reclamation and restore the land to a usable condition in a timely fashion.

In 2009, the Commission provided the previous Governor with several examples of leases that had recently been quitclaimed before reclamation to illustrate the problem this bill seeks to address. Additionally, several new mining leases are on the horizon that will require significant reclamation. Without AB 1054, the Commission will not receive any revenue from these leases after they go into reclamation. The reclamation process can take years to complete, and during this time the lessee occupies the property and the Commission is precluded from leasing these lands to other parties.

An example of a mining lease that was quitclaimed before reclamation was finished involves the lessee Homestake Mining and school lands located in Lake County. Homestake entered into a lease with the Commission in 1994, filed a quitclaim deed in 2002, and to date has not completed reclamation of the land. If AB 1054 had been in effect when the Homestake lease was quitclaimed, the California Teachers' Retirement System Fund would have received thousands of dollars a year beginning in 2002, when they quitclaimed the lease, to the present.

RECOMMENDED ACTION:

Staff recommends that the Commission sponsor Assemblymember Skinner's bill, AB 1054, which prevents a quitclaim of a mineral extraction lease from taking effect until reclamation is complete and the Commission formally accepts the quitclaim.

2. Long Beach Land Exchange

SUMMARY:

This legislative proposal would grant certain public trust lands, acquired by the Commission as part of the title settlement and land exchange agreement between the State, acting by and through the Commission and the City of Long Beach, to the City in trust.

IDENTIFICATION OF THE PROBLEM:

The Commission acquired the Bixby Public Trust Parcel, the Colorado Lagoon Public Trust Parcel, and the Marine Stadium Channel Public Trust Parcel as part of the Queensway Bay Title Settlement and Land Exchange Agreement, approved by the Commission on June 23, 2011 and signed by the Governor on August 8, 2011. This title settlement and land exchange agreement includes a provision that the Commission and the City will pursue legislation to include these three final public trust parcels in the City's statutory trust grant.

RECOMMENDED ACTION:

Staff recommends that the Commission sponsor legislation to include the three final public trust parcels in the City of Long Beach's statutory trust grant, as provided for in the approved land exchange agreement.

3. Newport Beach Land Exchange

SUMMARY:

This legislative proposal would grant certain public trust lands acquired by the Commission as part of a title settlement and land exchange agreement between the State, acting by and through the Commission and the City of Newport Beach, to the City in trust.

IDENTIFICATION OF THE PROBLEM:

The Commission, in settling a title and boundary dispute with the City, acquired a Public Trust Parcel as part of the Marina Park Title Settlement and Land Exchange Agreement, approved by the Commission on September 1, 2011 and signed by the Governor on January 13, 2012. This title settlement and land exchange agreement includes a provision that the Commission and the City pursue legislation to include the public trust parcel acquired by the Commission in the City's statutory trust grant.

RECOMMENDED ACTION:

Staff recommends that the Commission sponsor legislation to include the public trust parcel in the trustee's statutory trust grant, as provided in the approved agreement

4. Trespass on State Lands

SUMMARY:

This legislative proposal would allow the Commission to administratively impose penalties against persons who construct, maintain, place, use, or possess unauthorized structures on state lands.

The Commission sponsored similar legislation in 2010, AB 2664 (Chesbro), which was vetoed by former Governor Schwarzenegger.

IDENTIFICATION OF THE PROBLEM:

The Commission regularly encounters situations in which a person constructs, maintains, places, uses, or possesses a structure on state lands without obtaining proper approval by the Commission. This situation generally surfaces (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 (3) when the structure was authorized by a lease but the lease has not been renewed and is not in a holdover status. The Commission's existing recourse in these situations is limited to involving the Attorney General's Office to pursue court actions in which the state seeks compensation for the use of state lands and/or an order for the structure to be removed. Litigation for these cases can be very time consuming and extremely expensive, especially when considering the amount of the remedies sought. Additionally, the current situation provides little or no deterrent against future trespasses because the potential damages against a trespasser are often more or less equal to the cost of paying rent under a lease.

As of May 2010, eight recent cases regarding illegal structures on Commission land have cost the Attorney General's office \$709,585 in legal services. This figure does not include Commission staff time and much of the Attorney General's pre-litigation work.

The Governor, through the Department of Finance, is trying to find ways to control the costs associated with the Department of Justice's legal services. This bill would complement this effort by reducing the Commission's need for legal services from the Attorney General's office.

The Commission's counterparts in Texas, Washington, Oregon, and New York have statutory authority to impose administrative penalties to address trespass issues on state lands. This legislative proposal is modeled off of these states' laws, which have successful enforcement programs.

Further, this proposal is consistent with the Bureau of State Audits August 2011 report and Commission staff's Audit Action Plan.

RECOMMENDATION ACTION:

Staff recommends that the Commission direct staff to develop legislation, sponsored by the Commission, that would allow the Commission to impose a monetary fine on a person who has committed a trespass on state lands. The Commission would be required to provide due process protections to the affected party, which would include a 30-day notice, an opportunity to be heard at a Commission meeting, and an amnesty period of six months to remedy the violation without being subject to a fine. With this authority, the Commission would be better able to manage California's sovereign and school lands and would generate additional revenue to both the General Fund and the State Teacher's Retirement System.

5. Penalty Authority to Enforce Insurance and Bond Requirements on Lessees

SUMMARY:

This legislative proposal would authorize the Commission to assess a monetary penalty against lessees who are out of compliance with surety bond and liability insurance requirements.

IDENTIFICATION OF THE PROBLEM:

Existing law requires most lessees to insure the leased premises and post a surety bond. The specific insurance and bonding requirements vary depending on the type of lease, size of structure, level of use, location, and other factors. The insurance and bond requirements mitigate a potential financial claim resulting from an accident or damage occurring on state land. The bond also may be called to remove facilities from the lease at its termination or cover unpaid rent in lieu of or in conjunction with other remedies available.

The Bureau of State Audit August 2011 report found that the Commission is not consistently ensuring that lessees maintain a surety bond and liability insurance. The report, and subsequent recommendation to the Legislature, recommended that the Commission consider seeking legislation to provide the authority to assess a monetary penalty against lessees who are out of compliance with their lease bonding and insurance requirements.

RECOMMENDED ACTION:

Staff recommends that the Commission direct staff to develop and sponsor legislation for introduction this year that would give the Commission this authority.