

**STAFF REPORT
C76**

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J. Fabel

CONSIDER SETTLEMENT OF LITIGATION BETWEEN THE STATE OF CALIFORNIA, ACTING BY AND THROUGH THE STATE LANDS COMMISSION, AND LITTLE BEAVER LAND COMPANY, INC., CONCERNING LANDS ADJACENT TO THE SAN JOAQUIN RIVER, NEAR THE CITY OF ANTIOCH, SACRAMENTO COUNTY

PARTIES:

Little Beaver Land Company, Inc.

State of California, acting by and through the State Lands Commission

PROPOSED SETTLEMENT AGREEMENT:

The proposed settlement will settle litigation filed by Little Beaver Land Company, Inc. (Little Beaver), to quiet title to ±60 acres of land originally granted to Little Beaver's predecessor-in-interest in 1873 as swamp and overflow location 1060 (S&O 1060), also known as Kimball Island, located in Sacramento County (the Settlement). Under the Settlement, the State of California, acting by and through the State Lands Commission (Commission), will relinquish any claim to right, title, or interest in S&O 1060 in exchange for a waiver of all claims for attorney fees and costs. The case is *Little Beaver Land Company, Inc., v. State of California, acting by and through its State Lands Commission*, Sacramento County Superior Court, case no. 34-2016-00191162-CU-OR-GDS.

BACKGROUND:

The State of California, by an Act of Congress on September 28, 1850, commonly referred to as the Arkansas Swamp Lands Act, received title from the United States of America to Swamp and Overflowed (S&O) lands located within the State's boundaries.

Kimball Island, located within Lot 38, Township 2 North, Range 1 East, MDM, was surveyed as S&O lands and described in a plat dated February 14, 1872, titled "Two Bodies of Land Notoriously Swampy & Overflowed." Lot 38, was conveyed to the State of California on February 8, 1873. On October 11, 1873, Kimball Island was again surveyed by John Prentice, Sacramento County

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surveyor, as S&O 1060. A Certificate of Purchase for S&O 1060, dated November 3, 1873, was issued to Isaac Lobree conferring record title.

In 1870, the California Legislature prohibited the sale of S&O lands within 2 miles of any town or village (Stats. 1870, ch. 573). On March 30, 1872, the town of Antioch was incorporated (Stats. 1872, ch. 492). S&O 1060 is located within 2 miles of Antioch.

Between 1873 and 1951, record title to S&O 1060 passed to various parties until being transferred to Little Beaver in 1951. From 1951 onward, Little Beaver paid all property taxes and utilized S&O 1060 for both habitation and recreational purposes. On January 11, 1980, Little Beaver asked staff whether the State claimed an interest in S&O 1060. On February 4, 1980, staff replied with a letter indicating that the State may have unresolved title claims in the area but that the Commission lacked the staffing to conduct a thorough review at that time. Staff invited Little Beaver to submit an application to initiate an investigation and potential title settlement. No application was received.

Between 1999 and 2004, Little Beaver reengaged with staff to clear title to S&O 1060. After investigating, staff took the position that the State, not Little Beaver, likely held title to S&O 1060 because the Certificate of Purchase was issued in 1873, when it was illegal to sell S&O lands within 2 miles of a town. S&O 1060 is located within 2 miles of Antioch, incorporated in 1872, and thus the original sale and all subsequent transfers were void. Little Beaver disagreed, arguing that the original Certificate of Sale remains valid. Communication between staff and Little Beaver ceased in 2004 until Little Beaver filed its quiet title action against the State on March 16, 2016, in Sacramento County Superior Court.

Nature of the Dispute—The Validity of Little Beaver's Record Ownership

The dispute between Little Beaver and the Commission is based on whether Little Beaver's record title ownership is valid. Staff and the Attorney General's Office believe that the original sale of S&O 1060 in 1873 was void for the reasons discussed above. Little Beaver, in its complaint and previous interactions with staff argued that its title is valid by virtue of the original Certificate of Sale and patent.

After Little Beaver filed its complaint against the Commission, over a year and a half of litigation ensued, involving discovery and depositions taken by the Attorney General's Office. On July 20, 2017, the Commission filed a motion for summary judgment, asking the court to rule on the merits of Little Beaver's complaint in the State's favor. Little Beaver replied to the State's motion by raising, for the first time, a theory that it owned S&O 1060 under the legal

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doctrine of adverse possession. Under adverse possession, Little Beaver claimed that even if the original sale was void, payment of taxes, and ongoing recorded title ownership perfected its rights to S&O 1060.

On October 13, 2017, the court agreed with the State and invalidated every cause of action in Little Beaver's complaint. The ruling upheld the State's argument that land sales made in violation of the law were void; however, the court invited Little Beaver to amend its complaint to include its new theory of adverse possession. Little Beaver amended its complaint to include a claim of adverse possession on November 7, 2017.

After evaluating the new theory and the evidence presented in the case, both Commission staff and the Attorney General's Office conclude that Little Beaver's claim of title over S&O 1060 by adverse possession has significant merit. Although prohibited today, before 1969 private parties could adversely possess State proprietary lands including S&O and State school lands. Based on the evidence, the court, at trial, could likely find that Little Beaver gained title to S&O 1060 by adverse possession sometime between 1951 and 1969. Based on these new circumstances, staff approached Little Beaver to discuss settlement.

Nature of the Settlement—Confirmation That, While the Original Sale was Void, Little Beaver Perfected Title by Adverse Possession

To prevent further and unnecessary costs associated with litigation and trial preparation, both Commission staff and Little Beaver agreed to settle Little Beaver's claims. Under the agreement, the State of California, acting by and through the Commission, will relinquish any claim to right, title, or interest in S&O 1060 in exchange for a waiver, by all parties, of all claims for attorney fees and costs. The theory underlying the Settlement is that, while the original sale of S&O 1060 in 1873 was void for lack of authority, Little Beaver through its actions and unique circumstances validated title to those lands by adverse possession, sometime between 1951 and 1969.

ANALYSIS AND STAFF RECOMMENDATION:

Prior to 1969, a private party could adversely possess State-owned land so long as that land was proprietary, meaning it was neither reserved for nor dedicated to some public use. In 1969, Civil Code section 1007 took effect, which bans the acquisition of any State-owned land by adverse possession. (*Henry Cowell Lime & Cement Co. v. State of California* (1941) 18 Cal.2d 169, 172; Civ. Code, § 1007.) Swamp and overflowed lands, like S&O 1060, were not dedicated to public use when the State acquired them and were therefore considered proprietary and "capable of being acquired by adverse possession" prior to 1969. (*People v. Banning Co.* (1914) 167 Cal. 643, 647.)

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To acquire proprietary State-owned land by adverse possession prior to 1969, a party needed to satisfy the following elements for a period of 10 years:

1. A claim of ownership of the property, either under color of title, or claim of right;
2. Actual possession of the property under such circumstances as to constitute reasonable notice to the State;
3. Possession that is hostile to the State's title;
4. Continuous and uninterrupted possession of the property for a period of 10 years; and
5. Payment of all taxes levied and assessed upon the property during that period.

(*Nielsen v. Gibson* (2009) 178 Cal.App.4th 318, 325; Civ. Code, § 315; *People v. Banning Co.*, *supra*, 167 Cal. at p. 649.)

After evaluating the evidence in the case, Commission staff and the Attorney General's Office believe that the facts support Little Beaver's claim of possession to S&O 1060 by adverse possession. Little Beaver and its predecessors-in-interest held record title to S&O 1060 for over 100 years before Little Beaver's initial inquiry with the Commission in 1980. The original Certificate of Purchase of 1873 and recorded patent established color of title (i.e., the appearance of clean record title) even if the original transfer was invalid. In addition, the color of title provided sufficient hostility and reasonable notice to the State of Little Beaver's possession of S&O 1060. Undisputed evidence exists that Little Beaver cultivated and built upon S&O 1060 during a mostly uninterrupted period between 1951 and 1969. During that time S&O 1060 was inhabited and recreated upon by Little Beaver and all taxes were paid. Upon satisfying the elements of adverse possession, "fee simple title vests in the adverse possessor by operation of law" and it "is not required to take any further steps to acquire title once those conditions have been met." (*Marriage v. Keener* (1994) 26 Cal.App.4th 186, 191.) These elements strongly indicate that Little Beaver perfected its title to S&O 1060 by adverse possession sometime between 1951 and 1969.

State's Best Interests Analysis:

The State may not transfer public land out of public ownership without explicit statutory authorization; any attempt to do so without such explicit authorization is

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void and “no subsequent action [...] can give validity to the void act or ratify it in any way.” (*People v. California Fish Co.* (1913) 166 Cal. 576, 611-612.) Because the State lacked statutory authority to sell S&O 1060 in 1873, the purported sale to Little Beaver’s predecessor-in-interest was void and the Commission is legally barred from taking any action to attempt to ratify the original sale. Any settlement relying upon the validity of the original sale is therefore precluded by law.

But *People v. California Fish Co.* does not prevent the Commission from acknowledging that Little Beaver later acquired S&O 1060 by adverse possession. Because Little Beaver can adversely possess S&O 1060 regardless of the validity of the original sale, the Commission’s acknowledgment of adverse possession does not serve to ratify the original sale. The proposed Settlement serves to reaffirm the important principle invalidating unauthorized land sales, while serving the important policy aim of clearing title and resolving disputes to land where the law provides.

In addition, the proposed Settlement is narrow in scope and has limited application to the specific facts in question. Little Beaver can only raise a claim of adverse possession because it satisfied the necessary elements prior to 1969; since 1969, the law has precluded adverse possession of any State-owned lands. (Civ. Code, § 1007.) The circumstances of this case are further unique because Little Beaver: 1) had a good faith belief that its succession to the property was valid; 2) has paid all property taxes assessed upon the parcel; 3) can satisfy the elements of adverse possession; and, 4) has a witness who can testify as to the parcel’s use prior to 1969. These circumstances are highly unlikely to exist elsewhere and, consequently, it is equally unlikely that settling this case will invite other claims.

For these reasons, staff of the Commission and the Attorney General’s Office believe the proposed Settlement to be in the State’s best interests.

OTHER PERTINENT INFORMATION:

1. This action is consistent with Strategy 2.3 of the Commission’s Strategic Plan to align budget and policy initiatives and staff resources with the Commission and State priorities, including securing stable funding sources and resources to fulfill the Commission’s mission and vision.
2. Staff recommends that the Commission find that approval of the Settlement is exempt from the requirements of the California Environmental Quality Act because it is an administrative action that will not result in direct or indirect physical changes in the environment.

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Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

EXHIBIT:

A. Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

AUTHORIZATION:

1. Find that approval of the Settlement is exempt from the requirements of the California Environmental Quality Act because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

2. Find that the Settlement Agreement is in the best interests of the State.
3. Authorize the Executive Officer or her designee to execute the Settlement, in substantially the form of the copy of the Settlement on file with the Commission.
4. Authorize and direct the staff of the Commission or the Office of the California Attorney General to take all necessary or appropriate action on behalf of the Commission, including the execution, acknowledgment, acceptance, and recordation of all documents as may be necessary or convenient to carry out the Settlement; and to participate on behalf of the Commission in any legal proceedings relating to the subject matter of the Settlement and litigation.



THIS PRELIMINARY PLAT DOES NOT REPRESENT A THOROUGH ANALYSIS BASED ON A FIELD SURVEY OF ANY OF THE BOUNDARIES OR OTHER LINES SHOWN. IT ALSO DOES NOT CONSTITUTE A COMPLETE SEARCH OF ALL AVAILABLE RECORDS. IT IS TO BE USED AS AN APPROXIMATE GRAPHICAL REPRESENTATION OF RECORD LINES. A THOROUGH AND COMPLETE SURVEY MAY PLACE THESE LINES AND ASSOCIATED POINT AT DIFFERENT LOCATIONS.

THIS PLAT HAS NOT BEEN APPROVED BY THE STATE LANDS COMMISSION, AND DOES NOT CONSTITUTE AN OFFICIAL PLAT OF SUCH COMMISSION, NOR DOES IT ESTABLISH THE BOUNDARY LINES OR LIMITATIONS OF ANY STATE-OWNED LANDS DEPICTED THEREON. THIS PLAT CONSTITUTES A PRELIMINARY STAFF-USE-ONLY PLAT NOT INTENDED FOR PUBLIC USE/CONSUMPTION AND IS SUBJECT TO CHANGE. THE PRELIMINARY NATURE OF THIS PLAT WOULD NOT REQUIRE SUBMITTAL OR RECORDATION PURSUANT TO B&PC 8762.

EXHIBIT A

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LANDS OF LITTLE BEAVER LAND CO.
 APN 158-0110-003
 SACRAMENTO COUNTY

CALIFORNIA STATE
 LANDS COMMISSION

