

30. STATUS OF MAJOR LITIGATION.

The attached Calendar Item 28 was submitted to the Commission for information only, no action thereon being necessary.

Attachment:

Calendar Item 28 (4 pages)

28.

STATUS OF MAJOR LITIGATION

As of November 31, 1973, there were 245 litigation projects involving the Commission, up six from last month.

1. U.S. v. 1164.34 Acres W 503.696
U.S. District Court Case No. 2274

(U.S. condemnation action for wildlife refuge of all the mud flats between the Sears Point Highway and San Pablo Bay boundary by Mare Island Navy Yard on the east and Sonoma Creek on the west.)

Tract 12 in the condemnation take is the subject of a stipulation for judgment approved by the Commission at its January 1973 meeting. Said judgment will establish the 1923 U.S. Government Land Office meander line as the permanent and fixed boundary line between the privately owned uplands and the sovereign lands of the State. The case is still under negotiation.

2. Pembroke v. State W 503.699
Orange Superior Court Case No. 189853

(Declaratory relief action by plaintiff to declare its rights vis-a-vis the State's interest.)

Factually, the case concerns the last natural position of the Santa Ana River, and the extent to which the bed of the river crosses the private property of the various parties. The Office of the Attorney General has reached a tentative negotiated settlement of the matter based upon the 1913 survey of the Santa Ana River. The paper work necessary for final approval and filing is now being processed.

INFORMATIVE CALENDAR ITEM NO. 28. (CONTD)

3. City of Albany v. State W 503.726
Alameda Superior Court Case No. 428396

(Plaintiff seeks declaratory relief with regard to the State Lands Commission finding that the 1961 tideland grant to the City of Albany had not been substantially improved.)

On September 28, 1973, the Court of Appeal, Division One, issued an alternative writ in the Albany case. The Court directed the Superior Court of Alameda County to vacate its order of May 9, 1973, to deny intervenor's motion for summary judgment and to hear the matter on the merits. All responsive pleadings have been filed with the District Court of Appeals. The Court of Appeals has scheduled oral argument on the matter for December 20, 1973.

4. Pariani v. State of California W 503.737
San Francisco Superior Court Case No. 657291

(Plaintiff seeks to quiet title to three parcels of land in Sonoma and Lake Counties. State patented said land into private ownership in 1953, reserving all mineral rights. Plaintiff now seeks to determine whether geothermal energy was reserved to the State under the 1953 patent.)

The Attorney General's Office filed a cross-complaint in July 1973 and in October 1973, a demurrer was filed to certain answers filed by one group of plaintiffs. On December 4, 1973, the Court upheld the State demurrer, thereby eliminating three of the plaintiff's defenses in the case.

5. Bonelli Cattle Co. v. State of Arizona W 503.739
U.S. Supreme Court Case No. 72-397

(Action to quiet title to certain lands lying within the former bed of the Colorado River.)

State of California has entered the case as amicus curiae and filed a brief in support of positions taken by the State of Arizona. Questions presented were the definition of the high water mark, the ownership of land exposed by channelization, whether federal or State law controls in the case, and whether the Arizona Supreme Court must support the Submerged Lands Act.

The case was argued before the U.S. Supreme Court on October 15, 1973.

INFORMATIVE CALENDAR ITEM NO. 28. (CONTD)

6. Union Oil of California v. Houston I. Flournoy, et al.
U.S. District Court, Central District
Civil No. 732486

W 503.747.

(An action by Union Oil Company to prevent State from selling royalty oil.)

Under State Oil and Gas Lease PRC 3033.1 entered into with Union Oil Company, the Commission had the right to receive royalty payments in kind. At its July 1973 meeting, the Commission announced its intention to receive bids for this royalty oil and for royalty oil for other Orange and Los Angeles County leases. Bids were subsequently received for this royalty oil. The contract for the purchase of this oil was to be awarded at the October 25, 1973, Commission meeting, but this award was prevented by Union's filing and obtaining on October 24, 1973, an order to show cause and temporary restraining order. Union alleged that the sale was in violation of the Federal Government "Phase IV" price controls and was hence illegal. On November 5, 1973, the preliminary injunction obtained by Union was denied and the temporary restraining order was dissolved.

On November 29, 1973, the Commission awarded the contract to purchase the oil. That same day, Plaintiff applied for another temporary restraining order to prevent the sale, which order was denied. Plaintiff's second application for preliminary injunction will be heard on December 17, 1973.

Further action in this case will await the December 17, 1973, hearing and any action by the Cost of Living Council.

INFORMATIVE CALENDAR ITEM NO. 28. (CONTD)

7. People v. William Kent Estate Company
Marin Superior Court Case No. 32824

W 1839.24

(Retrial of an action to abate a public nuisance (a fence erected and maintained perpendicular to the shoreline) on the Pacific Ocean side of the Bolinas Lagoon Sandspit. The case involved a judicial interpretation of the statutory phrase "Ordinary High Water Mark.")

All transcripts on appeal had been completed with Respondent (William Kent Estate Co.) filing a Motion for Order to Dismiss the Appeal on June 18, 1973. The Court of Appeals set a hearing date of November 14, 1973, but on October 10, 1973, the court dismissed the case as moot. Appellant's (State's) Petition for Rehearing, filed on October 25, 1973, was denied on November 9, 1973. State filed a Petition for Hearing on November 19, 1973, with the State Supreme Court. It is anticipated that the Court will decide shortly whether or not they will grant the State's petition.

8. State of California v. County of San Mateo, et al.
San Mateo Superior Court Case No. 144257

W 1839.28
W 6987

Suit seeking Declaratory Judgment to protect the public property rights in land covered by the open waters of South San Francisco Bay westerly of the deep draught ship channel, the area of which has been substantially increased with the filing of a cross-complaint by Westbay Community Associates to be an approximate 10,000 acres and twenty-one miles of shoreline including most of the westerly portion of the Bay between the San Francisco International Airport and the southerly San Mateo County line. Titles to other adjacent substantial areas of salt ponds have been brought into the case with the filing of a Complaint in Intervention by Leslie Salt Co. Pretrial and Discovery proceedings are now in progress, with factual investigation relating to substantial and complex issues continuing.