

MINUTE ITEM

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37.

SETTLEMENT OF TIMBER TRESPASS ON
 SCHOOL LANDS - SH 1/4 OF SECTION 16, T23N., R8E., ON N.D.M.,
 PLUMAS COUNTY

At its regular meeting of May 27, 1975, the State Land Commission authorized the State Lands Division and/or the Office of the Attorney General to take whatever steps may be necessary, including litigation, to collect monies due, interest and penalties from the U. S. Department of Agriculture, Forest Service, and Sierra Pacific Industries resulting from trespass on the SH 1/4 of Section 16, T23N., R8E., M.D.M., Plumas County (Minute Item 21, May 27, 1975).

Pursuant to Commission authorization, Division staff proceeded with the negotiations for and collection of monies in settlement of the subject timber trespass.

An investigation of the net log scale records of both the Forest Service and Sierra Pacific Industries was undertaken to ascertain the estimated net log scale by tree species removed from the described school land. A recapitulation of the total net log scale by tree species and the total values of such tree species follows:

Species	Net Log Scale in M Board Feet	Value
Ponderosa Pine	193.81	\$32,220.05
Sugar Pine	47.64	6,459.56
White Fir	305.86	20,426.73
Douglas Fir	17.46	1,591.75
Incense Cedar	67.62	7,177.19
TOTAL:	<u>632.30</u>	<u>\$67,875.28</u>

The logs from trees cut and removed from the State land were scaled at the Sierra Pacific Industries sawmill by Forest Service personnel. The scaling of the logs was conducted during the period of June 3, 1974, through May 12, 1975; this period covered portions or all of five calendar year quarters.

The total value of the net log scale by species is based upon the prices per thousand board feet (MBF) of the Forest Service's Red Ridge timber sales contract. Base contract prices per MBF adjusted to the calendar year quarter in which the State logs were scaled, less an wood use fee, were applied in

CALENDAR ITEM NO. 37. (CONTD)

arriving at the aggregate value by species. The total value of all species amounted to \$67,875.28, as shown above.

Negotiations with Sierra Pacific Industries led to agreement as to the total net log scale and prices per MBF by species by calendar quarters. Agreement was reached with Sierra Pacific Industries that interest would be paid the State on the total value of \$67,875.28 for a 28-month period at the legal rate of interest in the total amount of \$11,086.32. Separate checks for the above stated amounts, totaling \$78,961.60 were received by the Division on October 26, 1976 with the understanding that Sierra Pacific Industries is held harmless from any other future action on the Red Ridge Trespass on the SE 1/4 of Section 16, T23N, R8E, M.D.M., Plumas County.

On November 26, 1975, the Division, on behalf of the Commission, filed an Administrative Complaint against the U.S. Forest Service for Timber Trespass, Plumas National Forest, in compliance with the Federal Torts Claim Act, in the total amount of \$114,859, broken down as follows:

Damage by Loss of Timber	\$87,859.00
Cost to Replant Trespass Area	\$ 2,000.00
Soil Engineering Cost	\$25,000.00

Upon completion of the above-described mutual agreement with Sierra Pacific Industries for the damage by loss of timber, the Division concentrated its negotiations with the Forest Service to secure one of the following alternatives, relative to the planting of the 30 acres, more or less, of school land which were clear cut during the timber trespass.

- a. A mutual agreement and commitment that the Forest Service will plant the trespass area in compliance with the California Forest Practice Rules, Northern Forest District Stocking Standards; or
- b. Payment in the amount of \$2,000 to cover the cost of planting and stocking the timber trespass area.

On December 28, 1976, the Division received from the Forest Service, a Voucher for Payment Under Federal Tort Claims Act. The award or settlement for replanting the timber trespass area on 30 acres of State lands was stipulated as \$2,000. Instructions were given for said Voucher for Payment to be executed by an authorized representative and return for processing for payment. A copy of the Voucher for Payment is on file in the office of the State Lands Division and by reference made a part hereof.

Commission authorization is requested for execution of the aforementioned Voucher for Payment, and the acceptance of the \$2,000 to be received from the Forest Service as a fair and equitable settlement for the planting cost of the timber

CALENDAR ITEM NO. 37. (CONTD)

trespass area. Such monies received shall be expended for the specific purpose for which said amount was collected.

Relative to the soil engineering cost in the Commission's complaint, an on-the-ground inspection of timber trespass area was undertaken on June 17, 1976, by a Division staff member. His findings reported: There was no sign of slippage or instability at the landing, which appears to have been sloped to some extent to control runoff, or along the spur road that has been waterbarred.

The Forest Service has expressed its view point on the landing construction and use on the timber trespass area as follows:

"It is accepted by the Forest Service that the timber trespass on State lands within the Plumas National Forest occurred as a result of the actions of a purchase of National Forest Timber under contract with the Forest Service. The contractor, Sierra Pacific Industries, did construct a landing on State lands where soil stability may have been affected by the construction. While this construction was unauthorized by both the State and the Forest Service, there were no actions by either the Forest Service or the State that would suggest liability on either party should soil movement occur in the future."

Division concurrence in the above-stated position has been provided by its Legal Unit. Commission authorization is requested by the Legal Unit of the Division to dismiss the Commission's complaint against the Forest Service for timber trespass, Plumas National Forest upon receipt of their \$2,000 payment for the planting cost of the timber trespass area. Such action will bring this timber trespass matter to a conclusion.

EXHIBITS: A. Location Map. B. Voucher for Payment.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE AMOUNT OF \$78,961.60 REPRESENTS A FAIR AND JUST MONETARY SETTLEMENT FOR VALUE OF TIMBER REMOVED IN THE JUNE 1974 TIMBER TRESPASS ON STATE SCHOOL LAND DESCRIBED AS THE SE 1/4 OF SECTION 16, T23N, R8E, M.D.M., IN PLUMAS COUNTY, AS WELL AS INTEREST DUE.
2. AUTHORIZE THE ACCEPTANCE OF THE \$78,961.60 FROM SIERRA PACIFIC INDUSTRIES, HAGLE LAKE DIVISION AS PAYMENT IN FULL FOR TIMBER REMOVED IN SAID TIMBER TRESPASS.
3. DIRECT THE DIVISION TO ADVISE SIERRA PACIFIC INDUSTRIES THAT IT IS HELD HARMLESS AND RELEASED FROM ANY OTHER FUTURE ACTION ON THE RED RIDGE TRESPASS OF JUNE 1974, INCLUDING POSSIBLE DAMAGE BY EROSION, LAND SLIPPAGE OR

CALENDAR ITEM NO. 37. (CONTD)

SLIDE AS THE RESULT OF LOGGING AND LANDING CONSTRUCTION ON SAID TIMBER TRESPASS AREA.

4. AUTHORIZE THE EXECUTION OF VOUCHER FOR PAYMENT UNDER FEDERAL TORT CLAIMS ACT, AND ACCEPTANCE OF \$2,000 TO BE RECEIVED FROM THE FOREST SERVICE AS A FAIR AND EQUITABLE SETTLEMENT FOR THE PLANTING COST OF THE SAID TIMBER TRESPASS AREA. SUCH MONIES RECEIVED SHALL BE EXPENDED FOR THE SPECIFIC PURPOSE FOR WHICH SAID AMOUNT WAS COLLECTED.
5. CONCUR IN AND ACKNOWLEDGE THAT THE LANDING CONSTRUCTED ON SAID TIMBER TRESPASS AREA WAS UNAUTHORIZED BY BOTH THE STATE LANDS COMMISSION AND THE FOREST SERVICE AND THERE WERE NO ACTIONS BY EITHER THE FOREST SERVICE OR THE COMMISSION THAT WOULD SUGGEST LIABILITY ON EITHER PARTY SHOULD SOIL MOVEMENT OCCUR THEREON IN THE FUTURE.
6. AUTHORIZE THE DIVISION'S LEGAL UNIT TO DISMISS THE COMMISSION'S COMPLAINT AGAINST THE FOREST SERVICE FOR TIMBER TRESPASS, PLUMAS NATIONAL FOREST FILED IN COMPLIANCE WITH THE FEDERAL TORTS CLAIM ACT.