

MINUTE ITEM

This Calendar Item No. 50
was approved as Minute Item
No. 50 by the State Lands
Commission by a vote of 3
to 0 at its 10/30/81
meeting.

MINUTE ITEM

10/30/81
C 22-00
W 503.849
W 503.1101
W 503.1102
Crow
Fossium

50. AUTHORIZATION TO ADOPT HIGH AND LOW WATER LINES OF CLEAR LAKE, LAKE COUNTY.

During consideration of Calendar Item 50, attached, Chairman Kenneth Cory requested that any reference to the reason for adopting the high water, low water decision be deleted from the staff recommendation. The Commission also requested that this item be included in all further agendas until the Commission deems otherwise.

Upon motion duly made and carried, the following resolution was adopted by a vote of 3-0.

THE COMMISSION:

1. REAFFIRMS ZERO ON THE RUMSEY GAUGE AS THE ELEVATION OF THE LOW WATER LINE OF CLEAR LAKE, AND ADOPT 7.56 ON THE RUMSEY GAUGE AS THE HIGH WATER LINE ELEVATION UNTIL SUCH TIME AS THE ELEVATIONS OF THOSE LINES MAY BE SET BY ADJUDICATION.
2. AUTHORIZES STAFF AND THE ATTORNEY GENERAL TO TAKE THE POSITION THAT ZERO AND 7.56 ON THE RUMSEY GAUGE ARE THE LOW AND HIGH WATER LINES OF CLEAR LAKE.
3. DIRECTS STAFF TO MEET AND CONFER WITH LAKE COUNTY OFFICIALS AND STAFF IN ORDER TO NOTIFY THE COUNTY OF THE COMMISSION'S ACTION AND TO URGE THAT THE COUNTY ADOPT ZERO AND 7.56 ON THE RUMSEY GAUGE AS THE LOW AND HIGH WATER LINES OF CLEAR LAKE FOR PURPOSES OF ADMINISTERING THE GRANT.

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AUTHORIZATION TO ADOPT HIGH AND LOW
 WATER LINES OF CLEAR LAKE, LAKE COUNTY

The California Supreme Court in State of California v. Superior Court (Lyon) 29 Cal. 3d 210 in conjunction with its companion case, State of California v. Superior Court (Fogerty) 29 Cal. 3d 240 has held that the bed of Clear Lake is owned by the State up to the low water line and that the privately owned shorezone between the low and high water lines is impressed with the public trust for commerce, navigation, fishing, other recreational uses and for environmental purposes. The Lyon decision further held that the boundary between public and private ownership should be located with reference to Clear Lake's current levels rather than its natural levels.

Current water levels of Clear Lake can be determined in various ways. One way is to average arithmetically annual high and low levels. Another way is to adopt those water elevations which have been recognized by the public and private parties alike as representing the high and low water levels of the lake. The staff recommends the latter method for the reasons stated below. Although this method is appropriate to the conditions at Clear Lake, it is not necessarily appropriate to other waterways. High and low water levels of other waterways should be determined according to their own facts and circumstances.

Water levels at Clear Lake have been and are measured by a gauge located in Lakeport. This gauge is known as the Rumsey Gauge because it was established by Captain D. C. Rumsey in approximately 1898. Elevations of the lake were measured by other gauges dating back to 1873. Zero on the Rumsey Gauge is 20.1 feet below the center of the large concrete star in the northeast corner of Courthouse Park in Lakeport. Since its inception, the Rumsey Gauge has been utilized and recognized as the standard of measurement of water levels at Clear Lake.

A 2
 S 2

CALENDAR PAGE	177
MINUTE PAGE	2742

CALENDAR ITEM NO. 50 (CONTD)

A 1913 Yolo Water and Power Company Survey recognized zero on the Rumsey Gauge as the elevation of the boundary between the lakebed and privately owned uplands for purpose of acquiring water rights and flood easements.

Clear Lake water levels have been subject to artificial influences and regulation since as early as 1914, when the Yolo Water and Power Company constructed a dam on Cache Creek approximately five miles below the outlet of the lake. In 1920 in the case of Gopcevic, et al. v. Yolo Water and Power Company, et al., the Mendocino County Superior Court issued a decree prohibiting Yolo Water and Power Company from raising the level of Clear Lake above 7.56 feet on the Rumsey Gauge except during storm or flood circumstances, and from lowering the lake level below zero on the Rumsey Gauge. Since the Gopcevic decree, the levels of zero and 7.56 on the Rumsey Gauge have come to be recognized as the low water line and high water line respectively by the courts, by property owners, and by Lake County, the State Lands Commission and the Corps of Engineers.

Zero on the Rumsey Gauge has been recognized as the elevation of the low water line in litigation between private property owners at Clear Lake. For example, in 1960, in Crews v. Johnson, the Lake County Superior Court made findings of fact that the low water line of Clear Lake was zero on the Rumsey Gauge. In the 1964 Lake County Superior Court case of Thury v. Foster, a stipulation was filed by the parties recognizing the boundary between the State-owned bed of Clear Lake and privately owned uplands as being zero on the Rumsey Gauge. The Court's file contains a letter from Kenneth Smith of the State Lands Commission staff stating that the low water line was zero on the Rumsey Gauge.

The State Lands Commission has officially recognized zero on the Rumsey Gauge as the low water line on two occasions. In February of 1967, the Commission found that the low water line was zero on the Rumsey Gauge, that zero on the Rumsey Gauge was the accepted boundary by property owners, and that construction around the lake was based on the assumption that the State would recognize zero on the Rumsey Gauge as the low water boundary. In November of 1974, the Commission approved a set of maps titled "Map of the Low Water Line of Clear Lake" based on a State Lands Division Survey of the line of zero on the Rumsey Gauge as that line existed at the time of the survey. The survey of the low water line of Clear Lake had been specifically requested by the Legislature by Chapter 58, Statutes of 1964.

CALENDAR PAGE	178
MINUTE PAGE	2243

CALENDAR ITEM NO. 50 (CONTD)

Excluding mineral rights, all of the State's right, title and interest in the bed of Clear Lake, including the area between high and low water subject to the public trust was granted to Lake County by Chapter 639 of the Statutes of 1973. In making the grant, the Legislature directed the State Lands Commission and Lake County to recognize zero on the Rumsey Gauge as the low water line for purposes of administering the grant until such time as a judicial determination of the line is made.

Lake County, for its part, has also recognized and adopted zero and 7.56 on the Rumsey Gauge as being the low and high water lines, respectively. The County's Shoreline Ordinance, by which it administers the grant and leases the lakebed, defines the shoreline of the lake as being zero on the Rumsey Gauge. All improvements below zero Rumsey require a lease or permit from the County. The staff of the County's Lakebed Management Division as well as the County Assessor have recognized 7.56 on the Rumsey Gauge as being the high water line in communication with property owners.

Finally, the United States Army Corps of Engineers, in its regulation of artificial filling and shoreline protective devices, has recognized zero and 7.56 on the Rumsey Gauge as the levels of the low and high water lines, respectively.

By the terms of the grant of Clear Lake to Lake County, the County is authorized to lease the granted lands for purposes not inconsistent with the trust, and it is directed to take appropriate steps to terminate any trespasses upon the granted lands. The grant also authorizes the County and the State Lands Commission to settle boundary and title disputes with landowners by means of agreement, exchange or quitclaim. Any such settlement by the County must be approved by the State Lands Commission.

In addition to the Lyon case, the County and the State Lands Commission are parties in two other cases which involve the issue of the location of the high and low water lines of Clear Lake.

Because of the responsibilities imposed on the County and the State Lands Commission by the terms of the grant, and because the State Lands Commission and the County are parties to litigation involving high and low water line issues, it is important that the State Lands Commission and the County adopt a position as to the elevation of the high

CALENDAR ITEM NO. 50 (CONTD)

and low water lines. Because of the widespread and longstanding recognition of and reliance on the levels of zero and 7.56 on the Rumsey Gauge, the Commission should reaffirm zero on the Rumsey Gauge as the low water elevation and adopt 7.56 on the Rumsey Gauge as the high water elevation of Clear Lake.

AB 884: N/A.

IT IS RECOMMENDED THAT THE COMMISSION:

1. REAFFIRM ZERO ON THE RUMSEY GAUGE AS THE ELEVATION OF THE LOW WATER LINE OF CLEAR LAKE, AND ADOPT 7.56 ON THE RUMSEY GAUGE AS THE HIGH WATER LINE ELEVATION UNTIL SUCH TIME AS THE ELEVATIONS OF THOSE LINES MAY BE SET BY ADJUDICATION.
2. AUTHORIZE STAFF AND THE ATTORNEY GENERAL TO TAKE THE POSITION THAT ZERO AND 7.56 ON THE RUMSEY GAUGE ARE THE LOW AND HIGH WATER LINES OF CLEAR LAKE IN ANY AND ALL LITIGATION IN WHICH THE COMMISSION IS A PARTY.
3. DIRECT STAFF TO MEET AND CONFER WITH LAKE COUNTY OFFICIALS AND STAFF IN ORDER TO NOTIFY THE COUNTY OF THE COMMISSION'S ACTION AND TO URGE THAT THE COUNTY ADOPT ZERO AND 7.56 ON THE RUMSEY GAUGE AS THE LOW AND HIGH WATER LINES OF CLEAR LAKE FOR PURPOSES OF ADMINISTERING THE GRANT AND RESOLVING LITIGATION IN WHICH THE COUNTY IS A PARTY.

CALENDAR PAGE	180
MINUTE PAGE	2245