

**CALENDAR ITEM
C34**

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503.1971
J. Frey
C. Sproul

**CONSIDER APPROVAL OF PARTIAL SETTLEMENT OF
ZOLL DAN V. STATE OF CALIFORNIA EX REL. STATE LANDS COMMISSION,
AND
STATE OF CALIFORNIA EX REL. STATE LANDS COMMISSION V.
GARY ZOLL DAN AND LINDA ZOLL DAN, ERROL BURR AND SUZANNE BURR,
JOSEPH MARCANTONIO AND ANNA MARCANTONIO, ET AL.,
SIERRA COUNTY SUPERIOR COURT CASE NO. 6566,
[consolidated with Sierra County Superior Court Case No. 6310]
INVOLVING A PORTION OF THE NORTH FORK OF THE YUBA RIVER NEAR
DOWNIEVILLE, SIERRA COUNTY, CA**

PARTIES:

State of California
State Lands Commission
100 Howe Ave., Suite 100 South
Sacramento, CA 95818

Gary & Linda Zolldan
41380 Vargas Rd.
Fremont, CA 94539-5443

BACKGROUND:

Gary R. Zolldan and Linda L. Zolldan (Zolldans) filed a complaint against neighboring property owners Errol and Suzanne Burr and Joseph and Anna Marcantonio seeking to resolve certain property disputes, Sierra County Superior Court Case No. 6310. The named parties claim certain parcels lying along and extending to the bed of the North Fork of the Yuba River. In December 2005, the Zolldans, filed suit against the State and others (Zolldan v. State of California, ex rel. State Lands Commission, et al., Sierra County Superior Court Case No. 6310) claiming fee title to the exclusion of all others, and requesting deed reformation to settle a boundary line dispute and declaratory relief. The Commission answered the complaint denying the allegations and, on February 17, 2006, filed a Cross-Complaint (State of California ex rel. State Lands Commission v. Gary Zolldan and Linda Zolldan, Errol Burr and Suzanne Burr,

CALENDAR ITEM NO. **C34** (CONT'D)

Joseph Marcantonio and Anna Marcantonio, et al., Sierra County Superior Court Case No. 6566) seeking to quiet title and requesting declaratory and injunctive relief to recognize the state's public navigational easement in the waters and along the banks of the North Fork of the Yuba River. The cases have been consolidated for trial purposes in Sierra County Superior Court Case No. 6310.

The Zolldans sought a declaration of their property rights to the exclusion of others in lands they claim and to the use of the waters, bed and banks of the Yuba River as it flows past properties claimed by Errol and Suzanne Burr near the Lure Resort, which is owned and operated by the Zolldans, and by Joseph and Anna Marcantonio outside of Downieville, Sierra County, CA. The affected properties are Sierra County Assessor's Parcel Numbers: 002-170-003, 002-170-004, 002-170-006. Specifically the Zolldans, Burrs and Marcantonios denied the right of the public to navigate on and to use the Yuba River below the ordinary high water mark for navigation, fishing and other recreational uses (the public navigation easement). In addition to private recreational navigational use by the public in this area, during the past 15 years three commercial rafting companies have run rafting trips along this section of the river during portions of the year, accessing the river from public property upstream of the Lure Resort. The Commission has contended that the Zolldans, Burrs and Marcantonios own their property subject to the state's navigational easement that is held in trust for the people of California and subject to the use by the public of the waters of the river pursuant to this navigation easement, consistent with the provisions of Article X, section 4 of the California Constitution and the Act for the Admission of California into the Union (approved by Congress September 9, 1850).

After extensive negotiations, the State, the Burrs and the Marcantonios reached a settlement agreement entitled "Settlement Agreement and Mutual Release Regarding Pending Litigation Concerning Property Rights Along the North Yuba River." This Settlement Agreement was approved by the Commission in May, 2007 and the Sierra County Superior Court, as part of a Stipulated Judgment in November, 2007. In that agreement the parties agreed that the South Fork of the North Fork of the Yuba River is navigable in fact by small recreational craft and that it is subject to the state's navigational easement that is held in trust by the State for the People of California. The parties further agreed that the River may be used by the public for navigation and related activities such as fishing, swimming, sunbathing, breaks for rest and refreshment, portage, and for emergency egress. Finally, the parties agreed that the navigation easement extends to the waters of the river wherever they may be and to the bed and banks of the river up to the ordinary high water mark as indicated by the Agreement.

CALENDAR ITEM NO. **C34** (CONT'D)

The Zolldans declined to participate in the 2007 Settlement Agreement and continued to litigate the location of the ordinary high water mark on their property. Recently, settlement talks were resumed and the Commission's representatives were able to negotiate a settlement agreement with the Zolldans thereby avoiding a trial. The proposed agreement contains similar terms and conditions that were agreed upon in the settlement with the other parties in 2007. The location of the ordinary high water line on a short portion of the Zolldan property, involving the area of the bridge crossing, was placed lower on the vertical bank. This location is deemed to have an insignificant adverse effect on the public's right and ability to use the river.

With approval of this settlement agreement by the Commission and the Superior Court of Sierra County, the litigation between the Commission and all of the private parties will be resolved.

EXHIBITS:

- A. Location Map

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDING:

FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. CODE REGS. 15061 AS A STATUTORILY EXEMPT PROJECT PURSUANT TO PUBLIC RESOURCES CODE SECTIONS 21080.11, INVOLVING AN AGREEMENT SETTling BOUNDARY OR TITLE DISPUTES WITH THE STATE LANDS COMMISSION.

AUTHORIZATION:

APPROVE AND AUTHORIZE EXECUTION OF THE "SETTLEMENT AGREEMENT AND MUTUAL RELEASE REGARDING PENDING LITIGATION CONCERNING PROPERTY RIGHTS ALONG THE NORTH YUBA RIVER", AND THE FILING OF THE AGREEMENT, TO BE ATTACHED TO A STIPULATED JUDGMENT WITH THE SUPERIOR COURT FOR SIERRA COUNTY IN THE COMBINED CASES OF ZOLLDAN V. BURR, SIERRA COUNTY SUPERIOR COURT CASE NO. 6310 AND ZOLLDAN V. STATE OF CALIFORNIA EX REL. STATE LANDS COMMISSION, AND CROSS-COMPLAINT, STATE OF CALIFORNIA V. GARY ZOLLDAN AND LINDA ZOLLDAN, ERROL BURR AND SUZANNE BURR, JOSEPH MARCANTONIO AND ANNA MARCANTONIO ET AL., SIERRA COUNTY SUPERIOR COURT CASE NO. 6566.