

MINUTE ITEM

7/12/66

43. STIPULATED AGREEMENT IN COMPROMISE AND SETTLEMENT OF CLAIMS; STATE LANDS COMMISSION VS. BAY CITIES BUILDING MATERIALS COMPANY, INC., AND ARGONAUT INSURANCE COMPANY, SAN MATEO CO. - W.O. 1839.22, W.O. 5445, P.R.C. 275.1.

After consideration of Calendar Item 43 attached, and upon motion duly made and carried, the following resolution was adopted:

THE EXECUTIVE OFFICER IS AUTHORIZED TO APPROVE THE STIPULATED AGREEMENT IN COMPROMISE AND SETTLEMENT OF CLAIMS, ATTACHED HERETO AS EXHIBIT "A", AND RELEASE BAY CITIES BUILDING MATERIALS COMPANY, INC., AND ARGONAUT INSURANCE COMPANY FROM ALL CLAIMS ARISING OUT OF MINERAL EXTRACTION LEASE P.R.C. 275.1.

Attachment

Calendar Item 43 (4 pages)

43.

STIPULATED AGREEMENT IN COMPROMISE AND SETTLEMENT OF CLAIMS; STATE LANDS COMMISSION VS. BAY CITIES BUILDING MATERIALS COMPANY, INC., AND ARGONAUT INSURANCE COMPANY, SAN MATEO CO. - W.O. 1839.22, W.O. 5445.

Mineral Extraction Lease P.R.C. 275.1, covering approximately 7.44 acres of tide and submerged lands in the vicinity of Rockaway Beach, San Mateo County, was issued on January 8, 1947, to John V. Lloyd, pursuant to competitive public bidding, for a term of 15 years. The lease is now held by Bay Cities Building Materials Company, Inc., a California corporation.

On January 22, 1962 (Minute Item 5, page 7595), the Commission authorized the extension of the lease for a term of 10 years. Under the extended lease, the lessee was required to pay six cents royalty per cubic yard for all sand extracted, and was obligated to extract a minimum of 5,000 cubic yards of sand each lease year.

The lessee paid the annual rental of \$50, but did not report any extraction nor pay the royalty on the minimum annual extraction of 5,000 cubic yards per year. On September 24, 1964 (Minute Item 21, page 10,482), the Commission authorized the Executive Officer to terminate the lease and refer the matter to the Office of the Attorney General for appropriate action.

A Complaint was filed by the Commission against Bay Cities Building Materials Company, Inc., and its bonding company, Argonaut Insurance Company, seeking to recover damages in the amount of \$817.21. It was determined that the cost of the trial would far exceed the amount of damages and that, in the best interests of all concerned, the matter should be settled out of court. In accordance with the Stipulated Agreement in Compromise and Settlement of Claims attached hereto as Exhibit "A", the Bay Cities Building Materials Company, Inc., submitted a cashier's check in the amount of \$408.60.

IT IS RECOMMENDED THAT THE EXECUTIVE OFFICER BE AUTHORIZED TO APPROVE THE STIPULATED AGREEMENT IN COMPROMISE AND SETTLEMENT OF CLAIMS, ATTACHED HERETO AS EXHIBIT "A", AND RELEASE BAY CITIES BUILDING MATERIALS COMPANY, INC., AND ARGONAUT INSURANCE COMPANY FROM ALL CLAIMS ARISING OUT OF MINERAL EXTRACTION LEASE P.R.C. 275.1.

Attachment
Exhibit "A"

EXHIBIT "A"

W.O. 1839.22
W.O. 5445

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IN THE MUNICIPAL COURT, SOUTHERN JUDICIAL DISTRICT
COUNTY OF SAN MATEO, STATE OF CALIFORNIA

STATE LANDS COMMISSION OF THE
STATE OF CALIFORNIA,

Plaintiff,

v.

BAY CITIES BUILDING MATERIALS
COMPANY, INC., and ARGONAUT
INSURANCE COMPANY,

Defendants.

NO. 23710

STIPULATED AGREEMENT IN COMPROMISE
AND SETTLEMENT OF CLAIMS

WHEREAS, on or about January 8, 1947, the State Lands Commission, hereinafter referred to as the Commission, issued State Lease P.R.C. No. 275 to JOHN V. LLOYD for the purpose of extracting minerals from certain tide and submerged lands situated in the County of San Mateo, State of California;

WHEREAS, on or about March 10, 1958, BAY CITIES BUILDING MATERIALS COMPANY, INC., hereinafter referred to as Bay Cities, with the Commission's subsequent approval, was assigned all of the lessee's interest in said State Lease P.R.C. No. 275;

WHEREAS, Bay Cities on or about May 7, 1962, renewed said lease with the Commission, for an additional period of ten years;

WHEREAS, the provisions of said lease as renewed required Bay Cities to extract a minimum of 5,000 cubic yards of sand from the leased premises during each year of the lease and to pay royalties for all sand extracted in addition to the annual rental specified;

WHEREAS, Bay Cities failed to extract any sand whatsoever from the lease premises after January 8, 1962;

WHEREAS, the Commission terminated said lease effective September 29, 1964 because of Bay Cities' failure to extract the required minimum quantity of sand;

WHEREAS, the Commission filed the above entitled action seeking to recover damages from Bay Cities for Bay Cities' failure to extract the required minimum amount of sand and asserted that said damages were in the amount of eight hundred seventeen dollars and twenty-one cents (\$817.21), the amount of the royalties which should have been paid to the Commission if the minimum amount of sand had been extracted between the date of renewal and the date of termination of said lease;

WHEREAS, the Argonaut Insurance Company was joined to the above entitled action since it issued a bond insuring that Bay Cities would well and truly keep and faithfully perform all the terms, covenants, agreements and obligations of said lease;

WHEREAS, the answer jointly filed by Bay Cities and the Argonaut Insurance Company in the above entitled action, has raised affirmative defenses of force majeure and physical impossibility of performing the acts required of Bay Cities by said lease;

WHEREAS, the parties hereto cannot agree upon the measure of damages applicable in the above entitled case;

WHEREAS, the costs of trial which would be incurred by each party if the above entitled case was tried, would far exceed the amount of damages sought by the Commission;

WHEREAS, it consequently is in the best interests of all concerned that the above entitled matter be settled without the necessity of proceeding to trial;

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth below, the Commission, Bay Cities, and Argonaut Insurance Company, by and through their respective counsel, hereby agree that:

1. Bay Cities shall pay to the Commission the sum of four hundred and eight dollars and sixty cents (\$408.60) by certified or cashier's check in compromise and settlement of all claims of the Commission against Bay Cities arising out of State Lease P.R.C. No. 275.
2. Upon acceptance of said check by the Commission, the Argonaut Insurance Company shall be released from any claim by the Commission arising out of the surety bond issued by said company guaranteeing Bay Cities' faithful performance of the terms and conditions of State Lease P.R.C. No. 275.

3. This agreement shall be effective when a copy hereof, executed by the respective parties' counsel and accompanied by the check specified in paragraph one (1), is approved by the Commission.
4. Upon this agreement becoming effective, the parties hereto shall file appropriate documents with the court for the above entitled matters to be dismissed with prejudice.

DATED: June 2, 1966.

JEFFERSON E. PEYSER

THOMAS C. LYNCH, Attorney General

By /s/ Yale H. Smulejan
Attorney for Defendants, Bay Cities
Building Materials Company, Inc.
and Argonaut Insurance Company

By /s/ N. Gregory Taylor
N. GREGORY TAYLOR, Deputy Attorney
General - Attorneys for Plaintiff,
State Lands Commission of the
State of California

APPROVED:

STATE LANDS COMMISSION OF THE
STATE OF CALIFORNIA

By F. J. HORTIG, Executive Officer