

MINUTE ITEM

This Calendar Item No. 18
was approved as Minute Item
No. 18 by the State Lands
Commission by a vote of 2
to 0 at its 12-20-79
meeting.

CALENDAR ITEM

18.

12/79
W 22309
Cowan

DENIAL OF LEASE FOR
ELECTRIC SERVICE TO TRESPASSER

The Pacific Gas and Electric Company proposes to construct a 17KV overhead electric power line across a cutoff arm of the San Joaquin River. The power line is to provide electrical service to a proposed residence and a pump for agricultural irrigation, both on land owned by Mr. Bruce Martin, a current trespasser (see calendar item authorizing litigation against Mr. Martin W 21064).

The staff believes that authorizing this lease may be detrimental to the State's case against Mr. Martin. Although the lease is being applied for by a public utility company, the service is for the private consumption of one individual, the only public benefit being the taxes and fees associated with the service.

On February 23, 1976, Bruce Martin applied for a permit to place fill in the old bed of the San Joaquin River for the purpose of constructing a land bridge to his land on the opposite side of the River. The old channel of the river at the subject site was cutoff from the present channel during the 1955 flood and formed an oxbow. The upstream end of the old channel was silted in, reclaimed and is now being used for agricultural purposes. The lower end remains open to tidal action through the present channel of San Joaquin River (see Exhibit A).

Negotiations were conducted for the next year and a half with various local, state and federal agencies to resolve this and other problems associated with Mr. Martin's overall development plans. In August of 1977, the State Lands Commission staff was informed by Mr. Martin, that due to his inability to secure the necessary permits, he was terminating his proposed project.

The State Lands Commission Staff was informed that on or about September 25, 1978, Mr. Martin had constructed a road across the old bed of the River by placing approximately 1000 cubic yards of fill material in the River without obtaining the necessary permits from public agencies. October 4, 1978, the United States Corps of Engineers filed Violation Report No. E-78-93 and subsequently issued a Cease and Desist Order.

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Mr. Martin has been requested to remove the illegal fill by the United States Corps of Engineers, the Resources Agency and the Commission staff. To date, the fill has not been removed with the exception of a 30' wide breach cut through the fill Section, to provide sufficient water to a neighbor's pump.

The United States Corps of Engineers has referred the matter to their attorneys in Washington D.C. to proceed with action to force removal. They are deferring action on the PG&E permit until the illegal fill matter is resolved.

Although the Commission has routinely issued leases for utilities service facilities at similar sites, the Commission staff believes that it would not be in the best interest of the State to issue a permit for the proposed facilities at this time for the following reasons:

1. The beneficiary of the proposed facilities is and has been in trespass on sovereign lands in violation of the State and Federal law.
2. The beneficiary is asking that the State provide him with a service of great private benefit and little public benefit on the one hand while refusing to rectify a situation where intentional damage was done to public property by him on the other.
3. The lease may be detrimental to litigation against the beneficiary of the lease which is being proposed as a separate item in this Calendar.

PG&E has been notified of the Staff's position and has agreed to delay installation of the facilities until they are informed by the Commission that they may proceed.

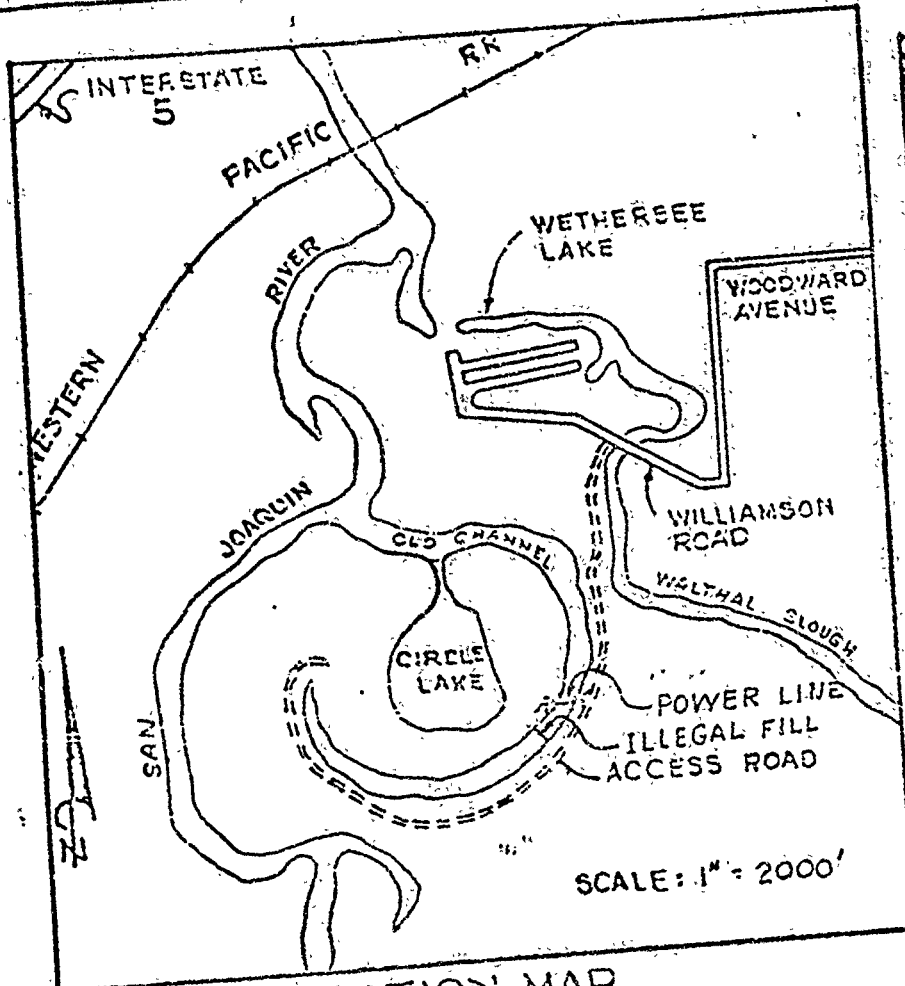
EXHIBIT: A. Location Map.

IT IS RECOMMENDED THAT THE COMMISSION DENY THE ISSUANCE OF A LEASE TO PACIFIC GAS AND ELECTRIC COMPANY FOR A POWER LINE ACROSS THE OLD CHANNEL OF THE SAN JOAQUIN RIVER TO PROVIDE BRUCE MARTIN WITH ELECTRICAL SERVICE; PROVIDED HOWEVER THAT SUCH DENIAL IS WITHOUT PREJUDICE TO THE APPLICANT REAPPLYING FOR THE LEASE AFTER THE COMMISSION HAS RESOLVED ITS PROBLEMS WITH MR. MARTIN.

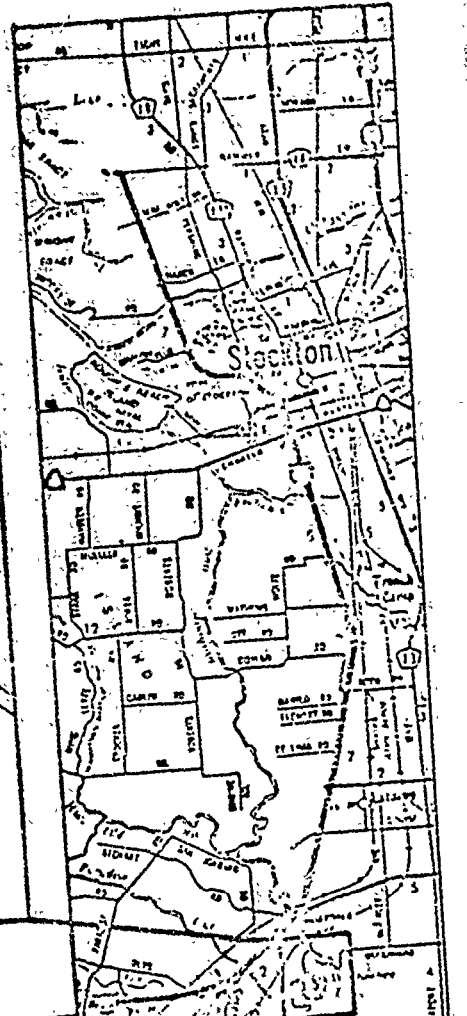
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EXHIBIT A

W 22309



LOCATION MAP



VICINITY MAP

SCALE 1" = 2000'
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