OFFICE OF THE AUDITOR GENERAL

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Report On
State Lands Commission
Trespass Activities

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The Honorable Speaker of the Assembly
The Honorable President of the Senate
The Honorable Members of the Senate and the
Assembly of the Legislature of California

Members:

Transmitted herewith is the Auditor General's report pertaining to the State Lands Commission's activities related to trespasses on public lands which are under the jurisdiction of the commission. The State Lands Commission consists of the Lieutenant Governor, the Controller and the Director of Finance.

According to the State Lands Commission records, as of June 30, 1974, there were 754 recorded trespasses on public lands under jurisdiction of the commission. Of these trespasses, 669, or 89 percent, have been recorded for three years or more. Examples of trespass include unauthorized land fillings and unauthorized construction of a structure on public lands.

The procedures of the State Lands Commission to effect binding leases or to eject trespassers have been inadequate. Subsequent to the initial contact with trespassers by the State Lands Division, which administers the commission's activities, there is generally very limited followup with the trespassers. As a result, there has been unauthorized use of public lands, and based on estimates of the State Lands Division, at least $200,000 annually in lease revenues is lost to the state.

When the State Lands Division becomes aware of an unauthorized use of public lands, the division requests the trespasser to file a lease application. However, if such an application is not filed, there is limited followup by the State Lands Division, despite the commission's authorization under the Public Resources Code to eject trespassers from public lands through appropriate court action.

As just one example of a recorded trespass, in 1953, the State Lands Division requested a Lake Tahoe marina owner to apply for a lease for a portion of the lake occupied by his marina. Finally, in 1968, when the owner applied for a lease, the State Lands Commission appraised the property and established an annual rental of $380 and back rentals totaling $1,925. While subsequent negotiations occurred, as of October 31, 1974, or approximately 21 years after the trespass was first noted, a binding lease between the State Lands Commission and the marina owner had still not been effected.

State Lands Division personnel have stated that one reason for not promptly resolving the backlog of trespass cases is that there are an insufficient number of personnel to handle all of the division's workload. It is agreed that the present backlog of trespass cases may be due in part to a lack of personnel.

The Auditor General has recommended that the State Lands Commission expedite the disposition of the 754 recorded trespass cases and any subsequently discovered trespass cases through either the effecting of binding leases or the ejection of the trespassers from the public lands, and has further recommended that the commission assign existing personnel, or if necessary, request additional personnel to dispose of this workload.

Respectfully submitted,

Vincent Thomas

VINCENT THOMAS, Chairman
Joint Legislative Audit Committee

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INTRODUCTION

In response to a legislative request, we have reviewed the State Lands Commission's activities related to trespasses on public lands which are under the jurisdiction of the commission.

The State Lands Commission is charged with managing state-owned tide and submerged lands (Public Resources Code, 6301), and certain other public lands.* California acquired the tide and submerged lands within its boundaries 124 years ago when it was admitted to the Union on September 9, 1850. These lands are held in trust by the state for the people of California. Responsibility for management of the tide and submerged lands was given to the State Lands Commission in 1938 by the statute which created the commission.

The commission consists of three members, the Lieutenant Governor, the Controller and the Director of Finance.

The State Lands Commission is authorized to lease lands under its jurisdiction for such purposes and for such terms and conditions as it deems advisable, provided it first considers the environmental impact of the proposed use of the land.

* These other public lands are primarily lands granted to the state for school purposes (Public Resources Code, Sec. 7301).

Day-to-day administrative functions of the State Lands Commission are handled by the State Lands Division. The staff of this division reports to the State Lands Commission executive officer who is appointed by the commission. For fiscal year 1973-74 the division had an authorized staff of 207.

The State Lands Division is organized into three broad general areas: General Administration, "Extractive Development", and "Land Operations". Extractive Development involves the administration of oil and mineral leases. Land Operations includes all aspects of the management of public lands under the jurisdiction of the commission, other than leasing these lands for oil and mineral extraction and the associated monitoring of the oil and mineral leases. The activities covered in this report are a part of the Land Operations Program relating to trespasses on public lands.

FINDINGS

AS OF JUNE 30, 1974, THERE WERE 754 RECORDED TRESPASSES,* SUCH AS UNAUTHORIZED STRUCTURES AND LAND FILLINGS, ON PUBLIC LANDS UNDER JURISDICTION OF THE STATE LANDS COMMISSION. OF THESE TRESPASSES, 669, OR 89 PERCENT, HAD BEEN RECORDED FOR THREE OR MORE YEARS. PROCEDURES TO EFFECT BINDING LEASES OR TO EJECT TRESPASSERS HAVE BEEN INADEQUATE. AS A RESULT, THERE HAS BEEN UNAUTHORIZED USE OF PUBLIC LANDS, AND BASED ON ESTIMATES OF THE STATE LANDS DIVISION, AT LEAST $200,000 ANNUALLY IN LEASE REVENUES IS LOST TO THE STATE.

According to the State Lands Commission records, as of June 30, 1974, the State Lands Division had 754 recorded examples of trespasses on file.* A trespass on public lands includes unauthorized filling or unauthorized construction of structures such as a pier, dock or marina.

When the State Lands Division becomes aware of an unauthorized use of the public lands under its jurisdiction, the trespasser is contacted and asked to file a lease application. However, subsequent to this initial contact, if the trespasser does not file a lease application, there is generally very limited followup by the State Lands Division to effect binding leases or to eject the trespasser. As a result of these inadequate followup procedures, the trespasser has unauthorized use of public lands and based on division estimates as explained on pages 9-10, at least $200,000 annually in lease revenues is lost to the state.

* Since the State Lands Division has not completed its investigations of all of the 754 recorded trespasses, further investigation by the State Lands Division may disclose that some of these recorded trespasses are not actual trespasses. However, the division has estimated that the total number of actual trespasses (recorded and unrecorded) is at least double the number of recorded trespasses.

As shown in the table below, 669, or 89 percent, of the 754 recorded trespasses in the State Lands Division's files as of June 30, 1974 had been on file with the division for three years or more.

Length of Time 754 Recorded Trespasses on Public Lands, Under the Jurisdiction of the State Lands Commission, Had Been on File with the Commission As of June 30, 1974

Length of Time Recorded Trespasses Have Been on File with the Commission	Number of Recorded Trespasses	Percent of Total
Less than 1 year	6	1%
1 to 3 years	79	10
3 or more years	669	89
Total	754	100%

Public Resources Code, Section 6302, added by Statutes of 1941, provides that: "The commission may eject from any tide and submerged lands... under its jurisdiction, any person...or corporation, trespassing upon any such lands, through appropriate action in the courts of the State."

Public Resources Code, Section 6303.1, added by Statutes of 1965, makes it a misdemeanor to willfully fill, dredge, or reclaim any state-owned land under navigable waters or to erect, maintain, or alter any structure on such land without written permission from the State Lands Commission.

Effect of Uncertain Boundaries
on Trespass Program

An explanation sometimes given by the State Lands Division for not proceeding more expeditiously against persons that they deem to be trespassers is the fact that firm boundaries have not been determined for most of the public lands under jurisdiction of the State Lands Commission. According to this explanation, solving the trespass problem is dependent largely on determining firm boundaries.

Although the lack of firm boundaries can obviously be a hindrance to an effective trespass program, and while we recognize it is difficult to determine firm boundaries, such boundaries can be determined. Further the commission has not taken action against some trespassers even when boundaries were not an issue.

Effect of Litigation
on Trespass Program

Another reason sometimes given for not proceeding more promptly against trespassers is the amount of State Lands Commission litigation already being handled by the Attorney General's Office.

A special "Land Law Unit" in the Attorney General's Office handles the State Lands Commission's litigation and also assists in the negotiation of boundary line agreements and land exchange agreements for the commission. The State Lands Commission's own staff attorneys prepare case workups for the Attorney General but the Attorney General is the "attorney of record", and that office handles all formal aspects of the litigation.

division's workload increased following enactment of legislation in 1970 which required the commission to obtain an environmental impact report when the use of the state land under commission jurisdiction is involved. This legislation also required the commission to make an inventory of all environmentally significant land under its jurisdiction. The budget cuts resulted from a reduction in the State Lands Division budget request submitted to the Governor.

The 1971-72 Budget Act resulted in the elimination of the division's only trespass investigator position. Although other State Lands Division personnel handle trespass cases on a time-available basis, the specific job of the trespass investigator is to find trespassers and put them under lease. The division had no specific trespass investigation program for two years until one trespass investigator position was again established in July 1973. During the 1973-74 fiscal year, the trespass investigator position was filled at various times during the year by three different employees for a total of about seven man-months.

As a result of 1973-74 legislative changes to the Governor's Budget, the division's total authorized staff was increased to 207 positions, an increase of 32 over the previous year. However, these positions were not immediately filled. Budget reports show a total of 172.4 man-years were used by the division during the 1973-74 fiscal year. Division personnel stated that the delay in filling these authorized positions was due to recruiting difficulty and delays on the part of the State Personnel Board.

State Lands Division personnel have stated that a reason for not promptly resolving the backlog of trespass cases is that there is an insufficient number of personnel to handle all of the division's workload. While the division itself requested and eventually obtained approval for three positions for a "trespass surveillance program", this program was not implemented during the 1973-74 fiscal year.

Loss of Lease Revenues

The State Lands Commission is authorized to lease lands under its jurisdiction to private parties and to other governmental agencies. Most leases to governmental entities are rent free. Certain recreational pier permits are by law issued to private parties for a nominal filing fee (Public Resources Code, Section 6503). Most other leases are based on the appraised value of the land to be leased.

Because appraisals have not been made for most of the recorded trespasses, we were unable to reasonably estimate the total lease revenues lost to the state. However, in preparing their budget proposal for 1971-72, the State Lands Division itself has estimated that if an additional $125,000 was appropriated annually for a program to eliminate trespasses, net annual revenues of $375,000 would accrue to the state by the fifth year of such a program. Further, in their 1973-74 budget proposal, the division in referring to the recorded trespasses stated, "...it is estimated that these 700 trespasses represent a yearly rental loss in excess of $250,000. It is requested that $60,000 be provided to implement this needed program".

Based on these estimates, the failure to effect binding leases with trespassers is resulting in an estimated loss of lease revenues to the state of at least $200,000 annually.

Conclusion

We conclude that the inadequate procedures of the State Lands Commission to either effect binding leases with trespassers on public lands or to eject such trespassers has resulted in ineffective control over public lands. This has directly resulted in unauthorized use of public lands, and based on estimates of the State Lands Division, at least $200,000 annually in lease revenues is lost to the state. Further, the public's interest has been inadequately protected.

We concur that the present backlog of trespass cases may be due in part to an insufficient number of personnel assigned to the trespass program.

The three cases presented in the Appendix to this report demonstrate the lack of timely action to either secure leases or eject trespassers.

RECOMMENDATIONS

We recommend that the State Lands Commission expedite the disposition of the 754 recorded trespass cases and any subsequently discovered trespass cases through either the effecting of binding leases or the ejection of the trespassers from public lands.

We further recommend that the State Lands Commission assign existing personnel or, if necessary, request additional personnel to dispose of the 754 recorded trespasses and any subsequently discovered trespass cases.

SAVINGS AND BENEFITS

Implementation of this recommendation will result in increased lease revenues to the state of at least $200,000 annually and will prevent unauthorized use of public lands.

SUMMARY OF COMMENTS OF THE EXECUTIVE OFFICER OF THE STATE LANDS COMMISSION AND HIS STAFF

1. The references in the report (beginning on page 4) to the 754 recorded trespasses should more properly be referred to as "apparent trespasses". While these cases are claimed by the State Lands Commission to be trespasses, this does not necessarily mean that they are in fact trespasses.

2. In some instances, the costs of determining the boundaries pertaining to trespasses could be greater than the revenues that would result if leases were effected with the trespassers.

3. The primary problem with regard to trespasses is the difficulty in determining the boundaries.

4. A reason that the 754 cases, claimed by the State Lands Commission to be trespasses, have not been resolved is that there are other problems under the responsibility of the State Lands Commission which are at least equal in priority to the trespass problems. Further, some of these other problems, such as the boundary problems, must be resolved before the trespass problems can be resolved.

5. While the State Lands Commission is planning for a few additional positions to make boundary determinations, additional personnel is not necessarily the answer for resolving some of the 754 trespass cases.

6. Nothing is contained in the report which justifies the terminology that State Lands Commission "procedures to effect binding leases (with trespassers)...have been inadequate".

Harvey M. Rose
Auditor General

Date: November 13, 1974

Staff: Glen H. Merritt
John McConnell
Richard Porter
Shirley Chown Orechwa

APPENDIX

THREE EXAMPLES OF THE 754 RECORDED TRESPASSES ON FILE WITH THE STATE LANDS COMMISSION AS OF JUNE 30, 1974

1. Land Fill at Donner Lake

In June 1971, staff of the State Lands Division noticed land fill was being dumped onto the previously existing fill in the natural bed of Donner Lake, which is public land under the jurisdiction of the State Lands Commission. This dumping was being done without a lease between the developer and the commission. In May 1972, almost a year subsequent to the trespass having been noted, the division formally notified the developer that: "The bed of Donner Lake below the low water mark is sovereign land, owned by the State of California and under the jurisdiction of the State Lands Commission."

On June 19, 1972, the division staff returned to the lake and found that fill operations were complete. The land fill projected waterward approximately 40 feet from the natural shoreline, and was reinforced by boulders at the water's edge. Attached to the land fill was a floating dock projecting out into the lake an additional 100 feet.

By late 1973, the Department of Fish and Game advised the State Lands Division that removing the fill would be more detrimental to the fish environment and to the water quality than leaving it in place.

Following extensive negotiations with the developer, the State Lands Commission traded the filled public land area to the developer in exchange for a nearby strip of land.

In our judgment, the commission's action in allowing a filling operation such as this to proceed without promptly entering into a lease, and then negotiating an exchange only after the filling had been completed, was not a proper administration of its responsibilities to control the uses made of public lands under its jurisdiction. Further, we conclude that, upon determination of the trespass, a binding lease should have been effected or the trespasser should have been ejected from the public lands.

2. Land Moving and Filling at Clear Lake*

A similar incident occurred about ten years ago at Clear Lake on public land under the jurisdiction of the State Lands Commission. In January 1963 a State Lands Division land survey crew working in the vicinity of Indian Gardens Subdivision found the lake shore in a natural state.

In the summer of 1964, a State Lands Division survey crew discovered that without permission from the State Lands Division the hillside was being cut away and pushed into the lake by a trespasser who had not entered into a lease with the State Lands Commission. The fill was flattened and built up about 12 feet above the natural low water line. At the request of the State Lands Commission staff attorney, the Lake County District Attorney got the trespassers to agree to stop any further work.

* Jurisdiction over the bed of Clear Lake was transferred to Lake County in August 1974 pursuant to Chapter 639, Statutes of 1973.

However, no action was taken by the State Lands Commission to require the trespassers to remove the fill that had been placed in the lake or to collect damages from the trespassers for having placed it there.

In 1968 the commission staff attorney assigned to the matter recommended to the assistant executive officer that legal action be taken to compel removal of the fill. In recommending legal action, he pointed out that filling was continuing to take place around the lake and that Indian Gardens would be an ideal test case since "our survey crew was on the spot just before the filling commenced, took pictures during the process of filling and are in a position to testify positively concerning the facts".

In anticipation of such legal action, a thoroughly documented November 1, 1968 report was prepared by the State Lands Commission staff. This report included, among other things, a summary of the survey crew's notes and actual before-and-after photographs of the original 1964 filling operations made by the survey crew. Two of these photographs are reproduced as follows:

BEFORE:

January 1963 - Indian Gardens in its natural state.

AFTER:

July 1964 - The once natural water area is now filled by earth, trees and brush from the hillside.

There was no further action by the State Lands Commission on this trespass during the six years since the completion of the November 1968 report.

We conclude that the lack of a binding lease, or failure to eject the trespasser, was not in the best interests of the state.

3. Marina Operated at Lake Tahoe

In late 1953 the State Lands Division asked a Lake Tahoe marina owner to apply for a lease for the portion of the lake occupied by his marina. The marina owner did not apply for a lease. Rather, in 1957, he told the State Lands Division that he would not apply for a lease until he was ordered to do so through legal process. He claimed that as an adjacent upland owner he had the right to locate his marina in the lake on public land without a lease.

In March 1968, apparently in order to get a necessary federal permit for his marina, the marina owner did apply to the State Lands Commission for a lease of the portion of the lake occupied by his marina.

After reviewing the lease application, a State Lands Division land agent appraised the property in October 1968, and a commercial lease for 15 boat berths and a commercial gas and oil sales operation was sent to the marina owner to be executed by him. An annual rental rate of $380.31 was set by the division for the one-third acre occupied by the marina.

Back rental was set at $1,925.77 for the eight years from January 1960 to the effective date of the proposed lease. No back rental was asked for the six years the marina owner had used the area between 1953 and 1960.

The marina owner objected to being charged back rent and did not execute the lease. Instead, his representative made a counter proposal that the marina owner pay an annual rent of $50, plus one percent of the gross income from the boat berths. The total rental would be about $77. No mention was made of the income from the boat launching, boat rentals, or gas sales.

In January 1969, the land agent handling the transaction recommended that division counsel take appropriate legal action. However, in February 1969, the Secretary of the Resources Agency sent a letter to the executive officer of the State Lands Commission with a copy to the chairman of the State Lands Commission. The letter stated as follows:

> "I have received [from the marina owner's representative] a copy of [the marina owner's] letter to you of January 17, concerning some regulations at Lake Tahoe on piers. I have enclosed a copy of the material which was forwarded to us by [the marina owner's representative] on this issue.
>
> "[The marina owner's representative], as you know, is a fellow member of the Tahoe Regional Planning Agency on which I serve. I know that he has the interest of the Lake in mind and it would appear that they are faced with a problem concerning state lands regulations.
>
> "I would appreciate a brief report on this issue so that I can understand it better and be of assistance if necessary."

After two months passed, the executive officer of the division notified the Secretary for Resources that the division legal staff was reviewing the matter to determine "an appropriate course of action". Now, nearly six years later, no action has been taken by the commission.*

In our judgment, when this type of trespass persists for approximately 21 years without a lease or without the trespasser being ejected, the public interest is not adequately protected.

* According to State Lands Division files, this marina has since been sold. State Lands Division staff contacted the new owner in October 1974 and informed him that he would need a lease from the state. No lease had been effected as of October 31, 1974 or approximately 21 years after the trespass was first noted.