

RESPONSE TO 2015 DROUGHT INFORMATION ORDER RE PRE-1914 RIGHTS

Statement number: [REDACTED]

Owner: [REDACTED]

Parcel Served: [REDACTED]

The state of California patented this property to [REDACTED] in 1874, based on the attached Certificates of Purchase dated 1860 and Swamp and Overflow land survey.

Under the various state acts¹ relating to the sale of lands obtained from the federal government by virtue of the federal Swamp and Overflowed Lands Act of 1850,² an individual had to apply to the Secretary of State (later, the State Lands Commission) through a local land officer, in order to make a claim for public lands. A claimant would have the land surveyed by the County surveyor, have the survey recorded, and forward a copy of the survey and field notes to the Secretary of State.³ The claimant was required to pay the County Treasurer one dollar (\$1.00) for each acre contained in the survey or he had the option of paying the purchase price over a period of five years, and paying an additional ten percent interest on the purchase price per annum.⁴ In exchange for the payment, the claimant would be given a receipt called a “Certificate of Purchase,” which entitled the claimant to lawful possession of the property. Should the claimant fail to make timely payments, fail to pay necessary interest, or fail to reclaim at least one-half of the land claimed within a five year period, the land was forfeited and was available for resale as if no purchase had been made.⁵ In other words, the transaction was annulled, and the Certificate of Purchase ceased to have any legal meaning. It was not until the full purchase price had been paid and reclamation had been performed, that the claimant was entitled to a patent from the State.⁶

Until a patent was issued, the claimant did not hold a riparian right for the land, because fee title remained vested in the State, and riparian rights are “part and parcel” of the lands to which they attach. However, during possession of the land, but before the claimant obtained fee title by means of a patent, claimant could, of course, divert water for domestic, agricultural or other purposes. Under California case law, this diversion constituted an appropriative right, not a riparian right.⁷ If the claimant eventually obtained a patent, he would also have an overlapping

¹ Stats. of Cal. (April 28, 1855); Stats. of Cal. (March 13, 1858); Stats. of Cal., Ch. 193 (April 28, 1858); Stats. of Cal. (April 18, 1859); Stats. of Cal. May 13, 1861); Stats. of Cal., Ch. 415 (March 28, 1886).

² Swamp and Overflowed Lands Act, 9 Stat. 519 (1850), codified at [43 U.S.C. § 982](#) (“Swamp Act of 1850”).

³ Stats of Cal. (April 28, 1855). This Act was later repealed and superseded by subsequent acts of the State Legislature, but the procedure remained largely the same.

⁴ Stats. of Cal (April 28, 1855), Sections 3, 4, and 5.

⁵ Stats. of Cal. (April 28, 1855), Section 6.

⁶ Stats. of Cal. (April 28, 1855), Section 14.

⁷ *Pleasant Valley Canal Co. v. Borror* (1998) 61 Cal. App. 4th 742, 774; *Rindge v. Crags Land Co.* (1922) 56 Cal. App. 247, 252.

riparian right. The riparian right would relate back to the date of the claimant's original, lawful entry on the land.⁸

Under California Statutes, Chapter 415, Section 42 (Approved March 28, 1886), landowners were authorized to form swampland districts for the purposes of reclaiming the lands contained therein.⁹ When the reclamation work contemplated by the Trustees or landowners of a swampland district was completed, the Trustees or landowners of the district were required to file a sworn statement in the County Recorder's Office that the reclamation work was completed.¹⁰ The County Recorder, in turn, was required to forward a certified copy of the statement to the State Land Office.¹¹ Three (3) years after the filing of the statement that all lands within the district had been reclaimed, the land was required to be examined by a Board of Commissioners appointed by the County Board of Supervisors for verification that the land had indeed been reclaimed, and the Commissioners had to file a sworn statement regarding the same with the County Recorder's Office and the State Land Office.¹² Proof of complete reclamation appears to have required a showing that the land had been successfully cultivated for three (3) years prior to the examination.¹³ It was then, and only then, that the landowners (holding the land under Certificates of Purchase) were entitled to a patent from the state.

For this property, the land was successfully reclaimed and the State of California issued the patent in 1874, evidencing cultivation prior thereto.

This information is being supplied in a summary fashion to satisfy the Drought Information Order request under a very short time constraint. Additional information exists to support the riparian and pre-1914 rights for this property that cannot be compiled and summarized in the time permitted, including expert testimony.

⁸ *Pleasant Valley Canal Co. v. Borror* (1998) 61 Cal. App. 4th 742,

⁹ See Cal. Stats. of 1886, Ch. 415, Sections 30, 31 for procedures for formation of Swampland Districts.

¹⁰ Cal. Stats. of 1886, Ch. 415, Section 41

¹¹ *Ibid.*

¹² Cal. Stats. of 1886, Ch. 415, Section 42.

¹³ *Ibid.*