

MINUTE ITEM

38. REQUEST FOR AUTHORITY TO PROCEED WITH LITIGATORY ACTION TO CLEAR TITLE TO LANDS IN CONTRA COSTA COUNTY - S.W.O. 8025, S.W.O. 7987.

After consideration of Calendar Item 14 attached, and upon motion duly made and unanimously carried, the following resolution was adopted:

THE EXECUTIVE OFFICER IS AUTHORIZED TO REQUEST THE ATTORNEY GENERAL TO PROCEED WITH THE FILING OF A QUIET TITLE ACTION OR SUCH ACTION AS IS DEEMED NECESSARY FOR THE PURPOSE OF DETERMINING AND CLEARING THE STATE'S TITLE TO THE E $\frac{1}{2}$ OF NE $\frac{1}{4}$ OF SECTION 25, T. 1 N., R. 1 W., M.D.M., CONTAINING 80 ACRES IN CONTRA COSTA COUNTY.

Attachment

Calendar Item 14 (2 pages)

CALENDAR ITEM

14.

REQUEST FOR AUTHORITY TO PROCEED WITH LITIGATORY ACTION TO CLEAR TITLE TO LANDS IN CONTRA COSTA COUNTY - S.W.C. 8025, S.W.O. 7987.

In January 1955 Mr. Philip R. Calkins initiated an application through the Commission under the provisions of Sections 2400 and 2402, inclusive, of Title 2, Division 3, of the California Administrative Code, to acquire title to federal land in Contra Costa County on the northerly side of Mt. Diablo State Park described as follows:

$E\frac{1}{2}$ of $NE\frac{1}{4}$ and $W\frac{1}{2}$ of $NW\frac{1}{4}$ of Section 25, T. 1 N., R. 1 W., M.D.M., containing 160 acres

The State's application filed with the United States Bureau of Land Management was approved, and on March 15, 1963, title to the land was conveyed to the State by the United States.

During the pendency of the aforementioned State application, the Southern Pacific Railroad Company filed an application directly with the United States Bureau of Land Management for the $E\frac{1}{2}$ of $NE\frac{1}{4}$ of said Section 25, containing 80 acres. This application was made on behalf of certain private individuals, including Gilbert H. and Phyllis Young, claiming title to the land as assigns of an innocent purchaser from the Western Pacific Railroad Company. The Central Pacific Railroad Company, as predecessor of the Western Pacific Railroad Company, was alleged to have acquired title to the 80-acre parcel through a grant of federal lands to railroad companies pursuant to acts of Congress in 1862 and 1864. Under the Transportation Act of 1940 (49 U.S.C. 958 sec. 65(b)), any person claiming title under an original railroad grant may attempt to perfect such title by submittal of the appropriate application to the Department of the Interior. The application of the Southern Pacific Railroad Company was rejected by the local land office, whereupon an appeal was filed with the Director of the United States Bureau of Land Management in Washington, D. C. The Director's office upheld the rejection, and immediately thereafter an appeal was taken to the Secretary of the Interior. The Secretary of the Interior upheld the Director's decision rejecting the application on the basis that an applicant for a patent to railroad grant land is properly required to submit evidence establishing that the land was sold by a predecessor carrier to an innocent purchaser for value. The claimant was apparently not able to submit adequate proof to this effect in his appeal to the Secretary, which resulted in the rejection.

Additionally, the basic record title upon which the present claimants, Gilbert H. and Phyllis Young, allege an interest in the land is incomplete. The first instrument of record is a deed from Gabriel Tarwater to William Wilson recorded December 2, 1890, with no record prior to this date of a patent issued by the United States nor evidence as to how Gabriel Tarwater acquired an interest in the property. For the period between December 2, 1890, and January 3, 1910, the record chain of title is complete. Thereafter, however, the record title is based upon a tax deed recorded on July 10, 1919, from M. W. Joost, Tax Collector of Contra Costa County, to C. J. Foskett. The will of Clifford J. Foskett has been admitted to probate. However, there is no evidence of a

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decree of distribution entered therein. On February 23, 1962, a grant deed conveying the property in question was recorded, whereby Constance C. Foskett and Jean Foskett purported to convey said land to Gilbert H. Young and Phyllis Young. By grant deed also recorded February 23, 1962, Gilbert and Phyllis Young purported to convey the land to the Congregation of the Sons of the Immaculate Heart of Mary of the Western Provinces, a California corporation. A provision in this deed recites that should the record title to said parcel not have been cleared to the satisfaction of the trustor or its successors the trustor or its successors shall have the option:

1. To pay the principal balance, or,
2. In lieu thereof, to quitclaim the fee title to said parcel to the beneficiary of his successors.

During staff negotiations with the trustor (Congregation of the Sons of the Immaculate Heart of Mary of the Western Provinces), the Division was informed that a quitclaim deed has been authorized by appropriate officers, and was in process of being executed and delivered to the beneficiaries (Gilbert and Phyllis Young). Staff discussions with the Youngs (present claimants), looking toward an amicable settlement of the title problem, have been unsuccessful. The claimants feel they have an interest great enough to justify litigation.

On December 11, 1963, the State Public Works Board submitted an application to purchase all of the above-described land, containing 160 acres, on behalf of the State Division of Beaches and Parks, for inclusion within Mt. Diablo State Park. By this filing, the Public Works Board established a preferential purchase right under the provisions of Section 6223 of the Public Resources Code.

In an effort to obtain title to at least a portion of the land in his application, Mr. Calkins, the private applicant to the Commission, undertook negotiations with representatives of the State Division of Beaches and Parks. However, the Division concluded that all of the land in his application was required for park purposes. Accordingly, Mr. Calkins voluntarily withdrew his application on May 12, 1964, in favor of the Division of Beaches and Parks.

Preliminary review of the title situation with the office of the Attorney General indicates that the claimants have exhausted their administrative review and process through appeal to the Secretary of the Interior. Prior to any sale of the land to the Public Works Board under its pending application for the benefit of the Division of Beaches and Parks, the only recourse appears for the State to initiate an action to quiet title through the courts to resolve the title problem.

IT IS RECOMMENDED THAT THE COMMISSION AUTHORIZE THE EXECUTIVE OFFICER TO REQUEST THE ATTORNEY GENERAL TO PROCEED WITH THE FILING OF A QUIET TITLE ACTION OR SUCH ACTION AS IS DEEMED NECESSARY FOR THE PURPOSE OF DETERMINING AND CLEARING THE STATE'S TITLE TO THE E $\frac{1}{2}$ OF NE $\frac{1}{4}$ OF SECTION 25, T. 1 N., R. 1 W., M.D.M., CONTAINING 80 ACRES IN CONTRA COSTA COUNTY.