

35. REQUEST OF DEPARTMENT OF FISH AND GAME FOR WITHDRAWAL OF LAND FROM PUBLIC SALE (APPLICATION NO. 116, RIVERSIDE LAND DISTRICT) - S.W.O. 8289.

After consideration of Calendar Item 24 attached, and upon motion duly made and unanimously carried, the following resolution was adopted:

THE COMMISSION REJECTS THE JUNE 29, 1967, REQUEST OF THE DEPARTMENT OF FISH AND GAME FOR WITHDRAWAL OF SECTION 16, T. 12 N., R. 15 E., AND SECTION 16, T. 13 N., R. 15 E., S.B.M., SAN BERNARDINO COUNTY, FOR A PERIOD OF TWO YEARS, FOR THE FOLLOWING REASONS:

1. THE DEPARTMENT HAS MADE IT CLEAR THAT IT DID NOT INTEND TO PURCHASE OR LEASE AT THE TIME OF EXECUTION OF ITS COMMITMENT ON JUNE 29, 1967, IN RESPONSE TO THE COMMISSION'S CIRCULARIZATION. INSTEAD, AS SUBSEQUENTLY STATED, THE SOLE PURPOSE OF THE WITHDRAWAL REQUEST WAS FOR THE BENEFIT OF THE UNITED STATES BUREAU OF LAND MANAGEMENT IN ANTICIPATION OF THE WORKING OUT OF A FUTURE EXCHANGE BETWEEN THE UNITED STATES AND COMMISSION.
2. THE REGULATIONS DO NOT PROVIDE, NOR IS THERE ANY PROVISION OTHERWISE, FOR WITHDRAWAL OF SCHOOL LAND AT THE REQUEST OF AN AUTHORIZED PUBLIC ENTITY DURING THE PENDENCY OF A PRIVATE PURCHASE APPLICATION WHERE THE SOLE PURPOSE OF THE REQUEST IS IN FURTHERANCE OF AN EXCHANGE OF SUCH LAND WITH THE UNITED STATES.
3. THE TWO PARCELS OF SCHOOL LAND ABOVE DESCRIBED WERE THE SUBJECT OF PRIOR TWO-YEAR WITHDRAWAL REQUESTS BY THE DEPARTMENT OF FISH AND GAME EXPIRING MARCH 10, 1967, AND APRIL 22, 1967, EACH CONTAINING A COMMITMENT THAT THE DEPARTMENT WOULD PURCHASE OR LEASE, SUBJECT TO THE AVAILABILITY OF FUNDS, WITH NO ACTION TAKEN THEREON.
4. WHILE THE 1963 COMMISSION POLICY AUTHORIZES EXCHANGES TO BE UNDERTAKEN WITH THE UNITED STATES ON BEHALF OF AND AT THE REQUEST OF SPECIFIED PUBLIC ENTITIES, THERE HAS BEEN NO COMPLIANCE WITH SAID POLICY WITH RESPECT TO A COMMITMENT INDICATING THE AVAILABILITY OF FUNDS TO COVER COSTS CONNECTED WITH SUCH EXCHANGE, THE AMOUNT OF WHICH IS SUBSTANTIAL FOR APPRAISAL, STAFF TRAVEL, STAFF NEGOTIATING TIME, ETC.
5. IN CONNECTION WITH THE COMMISSION'S STATUTORY RESPONSIBILITY FOR ADMINISTRATION OF STATE SCHOOL LANDS, IT HAS NOT BEEN CLEARLY AND ADEQUATELY DEMONSTRATED, PURSUANT TO THE REQUIREMENTS OF SECTION 6444 OF THE PUBLIC RESOURCES CODE, THAT SUCH EXCHANGE PROPOSAL WOULD BE TO THE ADVANTAGE OF THE STATE.

Attachment

Calendar Item 24 (4 pages)

24.

REQUEST OF DEPARTMENT OF FISH AND GAME FOR WITHDRAWAL OF LAND FROM PUBLIC SALE
(APPLICATION NO. 116, RIVERSIDE LAND DISTRICT, S.W.O. 8289)

At the meeting of August 21, 1967, the Commission considered a request of the State Department of Fish and Game to withhold from public sale, for an additional two-year period, two parcels of State school land described as Section 16, T. 12 N., R. 15 E. and Section 16, T. 13 N., R. 15 E., S.B.M. The Department had responded to the Division's circularized notice, resulting from the filing of a private purchase application for said lands, indicating it would purchase or lease such lands, subject to the availability of funds, within the two-year period established by regulations. This request, if granted, would, in effect, extend a prior two-year hold request during which the Department failed to act. As noted in the prior calendar item, the request of the Department was dated prior to expiration of the 45-day circularization period, but receipt thereof by the State Lands Division occurred after expiration of such period.

While the Department of Fish and Game, in response to the Division's notice, clearly made a commitment to purchase or lease said land within two years, subject to the availability of funds, the commitment provided further that "It is understood that failure to purchase or lease said parcels within the two-year period will cause said parcels to again be made available for sale to the general public."

The presentations made before the Commission on August 21 by representatives of both the Department of Fish and Game and United States Bureau of Land Management made it abundantly clear that the Department did not intend to purchase or lease said land, at the time of submittal of its written commitment. The sole purpose of the request was to have said land set aside for the period requested in order that an exchange might be negotiated between the Commission and the Bureau of Land Management, the net result of which would place title to this land in the United States and thereby consolidate United States holdings in the area. In this connection, particular reference is made to testimony by Mr. Davidson on behalf of Fish and Game, appearing on lines 6, 7 and 8 of page 5 of the Transcript of the meeting of August 21, 1967, wherein the statement is made "...we urge that the two sections be withdrawn from public sale pending acquisition by the Bureau through an exchange process." No evidence was presented, nor was testimony offered to the effect that Fish and Game would honor its commitment to purchase or lease. The testimony by Mr. Peavy, on behalf of the Bureau of Land Management, supported the request of the Department of Fish and Game that the land be set aside for exchange purposes. However, the best estimate as to when such an exchange might be accomplished is at least one year or some period in excess thereof (Transcript, p.11, lines 6, 7 and 8). The reference to this timetable indicates an indefinite period and no assurance has been given that an exchange transaction could or would be initiated within the two-year period.

The Commission, by specific statutory authority contained under Section 6210.2 of the Public Resources Code, may withdraw from public sale any lands under its jurisdiction. Existing regulations contain a clearly defined procedure for the withdrawal of lands on behalf of public entities in situations where a purchase application is or is not pending.

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Section 6443 of the Public Resources Code authorizes exchanges between the State and the Secretary of the Interior under Section 8 of the Taylor Grazing Act and Section 6444 of said code provides, in effect, that at the time the State patent is transmitted to the Governor for execution under an exchange transaction, the Commission shall certify to the Governor that in its judgment, it is to the advantage of the State to exchange the lands involved. The testimony presented to the Commission during its meeting of August 21, 1967 emphasizes the advantages favoring the United States in the event of consummation of an exchange whereby the two subject parcels would be transferred to federal ownership, but contained little justification for the exchange from the State's standpoint in keeping with the requirements of said Section 6444.

Mr. Peavy, representing the United States Bureau of Land Management, stated before the Commission on the above date, with reference to the two parcels involved, that "In this particular area it would be range management, game management, recreation and possibly some mining activity within the general area. These particular two sections are involved in our grazing management plans and our range management plans which are being perfected." (Transcript, page 7, lines 15 to 19, August 21, 1967 meeting.) While these lands might very well be useful to the United States in its range, grazing and game management plans, it is the opinion of the Division that advantages, if any, accruing directly to the State in the event of consummation of an exchange transaction, have not been demonstrated.

By reason of emphasis which has been placed on benefits accruing to the United States, it is felt that it would be most difficult to justify and support a finding as required by said Section 6444 of the Public Resources Code that the exchange is to the advantage of the State.

A principal item confronting the Commission is the matter of costs involved in consummating exchanges on behalf of public entities, including State agencies. In this connection, the Commission, in September 1963, following considerable study, established the policy for undertaking exchanges on behalf of such entities which reads as follows:

"REVOKES THE COMMISSION'S SEPTEMBER 13, 1957, DECLARATION OF A MORATORIUM ON EXCHANGES AND INDEMNITY SELECTIONS FOR THE EXCLUSIVE BENEFIT OF STATE AND LOCAL AGENCIES, IN ORDER TO PROVIDE FOR THE ACQUISITION OF LANDS FROM THE UNITED STATES UNDER EITHER PROCEDURE WHEN THE FEDERAL LANDS TO BE ACQUIRED ARE PROPOSED FOR DIRECT USE BY SUCH STATE OR LOCAL AGENCIES, AND WHEN NECESSARY FUNDS ARE MADE AVAILABLE TO PAY THE COMMISSION'S TOTAL COST OF THE EXCHANGE TRANSACTION AND WHEN THE PUBLIC AGENCY AGREES TO LEASE OR PURCHASE THE ACQUIRED LANDS AT MARKET VALUE UPON ACQUISITION BY THE COMMISSION; OR WHEN THE PURPOSE IS TO BLOCK OUT OR CONSOLIDATE STATE OR FEDERAL LANDS; SUCH TRANSACTIONS TO BE UNDERTAKEN ONLY WHEN, IN THE OPINION OF THE COMMISSION, IT IS DETERMINED TO BE IN THE BEST INTEREST OF THE STATE TO DO SO AND ADEQUATE ACREAGE OF THE APPROPRIATE TYPE OF STATE LAND IS AVAILABLE."

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Generally the policy requires:

1. Advance Commission approval of any transaction proposed by a public agency.
2. Funds to be available to cover the Commission's costs for any such transactions.
3. A firm commitment by the public agency that it will purchase or lease at market value following acquisition of title by the Commission in instances where acquisition of fee title from the United States on behalf of the public agency is the primary purpose of such exchange.
4. Adequate state acreage of the appropriate type to be available for exchange with the United States.

The Commission does not budget for nor does it otherwise have funds available for processing costs incident to completion of exchanges on behalf of public entities. Costs of such transactions are rather substantial in connection with appraisals for negotiating an equal value exchange plus staff time and travel. In discussing the exchange proposal, no testimony was offered with respect to payment of such costs.

Summarizing the foregoing, it is the opinion of the Division that it has not been clearly and adequately demonstrated that the best interest of the State would be served by withholding the two parcels involved from public sale for possible exchange with the United States under the request of Fish and Game, particularly in view of the fact that an application to purchase is now pending which indicates reasonable prospects for a sale by the Commission and the accrual of revenue therefrom.

IT IS RECOMMENDED THAT THE COMMISSION REJECT THE JUNE 29, 1967, REQUEST OF THE DEPARTMENT OF FISH AND GAME FOR WITHDRAWAL OF SECTION 16, T. 12 N., R. 15 E., AND SECTION 16, T. 13 N., R. 15 E., S.B.M., SAN BERNARDINO COUNTY, FOR A PERIOD OF TWO YEARS, FOR THE FOLLOWING REASONS:

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