

MINUTE ITEM

This Calendar Item No. 34  
was approved as Minute Item  
No. 34 by the State Lands  
Commission by a vote of 3  
to 0 at its 12-20-79  
meeting.

CALENDAR ITEM

34.

12/79  
W 503.1040  
Hight  
(Barton)

AUTHORIZATION TO FILE AMICUS CURIAE BRIEF

On October 15, the United States Supreme Court granted a writ of certiorari in Andrus v. Idaho (S. Ct. 79-260), to review the decision of the Ninth Circuit Court of Appeals affirming Idaho's entitlement to 3 million acres of public domain land under the Carey Act (43 U.S.C. Section 641, et seq.).

The Carey Act, originally enacted by Congress in 1894 (and subsequently amended), is a conditional grant of desert land to specific western states for irrigation and reclamation. In order to obtain this land, the state has to have actual settlers enter and reclaim the land, which is then patented to the individual settlers.

The western states with outstanding Carey Act entitlements to approximately 11 million acres of public land are: Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. California may have an entitlement still outstanding of up to 1 million acres.

California enacted enabling legislation to implement the Carey Act by Chapter 613, Statutes of 1915, which stated:

"The State of California hereby accepts the conditions of . . . (the federal Carey Act) . . . together with all the grants of land to the state under the provisions of the aforesaid act. The selection, reclamation and disposal of said land shall be vested in a commission . . ." (Emphasis added)

By the same legislation, California created the Carey Act Commission, made up of the Surveyor General, the State Engineer, and the Secretary of the Department of Natural Resources, or, until such officer may be appointed, a member of the State Water Commission.

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FILE NO.	2667

CALENDAR ITEM NO. 34. (CONTD)

The duties, powers, purposes, responsibilities, and jurisdiction of the Carey Act Commission were transferred to the Department of Public Works by Political Code section 363e (Chapter 607 of the Statutes of 1921), which was subsequently repealed by Chapter 655 of the Statutes of 1951. The duties and jurisdiction of the Carey Act Commission, however, were never transferred to another department, leaving the original California enabling legislation (Chapter 613, Statutes of 1915) in effect without ever having been repealed expressly or by implication, and without any state agency responsible for implementing its provisions. It is anticipated that legislation will be introduced to rectify this situation.

In the meantime, the other western states have individually enacted enabling legislation. In 1974, the State of Idaho requested that the Secretary of the Interior withdraw 27,400 acres in Idaho for Carey Act development. In 1975, the Bureau of Land Management rejected the application because the land had been withdrawn for other purposes, including stock-driveway purposes. Litigation ensued in which lower court decisions confirmed Idaho's position that the Carey Act is a grant of lands to individual states, which grant may not arbitrarily be denied by the Secretary of the Interior as long as the states comply with the conditions of the Act.

The Secretary of the Interior has appealed this matter to the Supreme Court because he maintains that the Carey Act lands were never granted to the states and that the federal government alone has discretion to determine what will be done with the land. Moreover, the federal government contends that it should not be required indefinitely to reserve these lands from other uses as that would impose a severe administrative burden on the Department of the Interior.

An adverse decision in this case would have a detrimental impact on pending litigation being pursued by the State Lands Commission, as well as the relationship between the State Lands Commission and the federal government. In order to protect California's interests, it is proposed that the State Lands Commission enter the case of Andrus v. Idaho as an amicus curiae.

CALENDAR NO.	210
AMOUNT PAID	2668

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IT IS RECOMMENDED THAT THE COMMISSION AUTHORIZE THE STAFF OF THE STATE LANDS COMMISSION, AND/OR THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL STEPS NECESSARY, INCLUDING FILING AN AMICUS BRIEF, IN ORDER TO PROTECT THE INTERESTS OF THE STATE OF CALIFORNIA UNDER THE CAREY ACT.

SEARCHED	211
SERIALIZED	2669