

MINUTE ITEM

This Calendar Item No. 50
was approved as Minute Item
No. 50 by the State Lands
Commission by a vote of 3
to 0 at its 5/29/80
meeting.

CALENDAR ITEM
50.

5/80
W 503.968
Judson
Grimes

AUTHORIZATION FOR SETTLEMENT OF LITIGATION IN
GROVES et al. v. STATE LANDS COMMISSION
COURT OF APPEAL, THIRD APPELLATE DISTRICT
3 CIVIL 19268

In July of 1978, a petition for writ of mandate was filed seeking to compel the State Lands Commission to issue a patent under the provisions of Public Resources Code section 7729 to the Southwest Quarter of the Northwest Quarter of Section 36, Township 1 South, Range 31 East, MDM in Mono County containing approximately 40 acres.

This parcel of land was acquired by the State from the federal government as school lands. In 1876, the state issued certificate of purchase No. 469 for this parcel which was fully paid for to John Kremkow. No patent was ever issued to Kremkow or anyone else for the land in question and the certificate has never been surrendered, its whereabouts apparently unknown.

During the 1950's the petitioners in this action discovered that the land was unassessed, unoccupied, and unpatented and began to take steps to acquire it for themselves. In 1963, they filed the first of their applications with the State Lands Commission for a patent under the provisions of Public Resources Code section 7729. This application was rejected by the Commission because the applicants were unable to show to the Commission's satisfaction that they were successors in interest of Kremkow as required by the statute.

In 1974, the petitioners then filed an action in quiet title in the Superior Court for Mono County against John Kremkow, his successors and all persons claiming an interest adverse to theirs and received a default judgment in 1975 on the basis of adverse possession. Later that year they reapplied to the Commission for a patent offering the recently acquired judgment as additional support for their entitlement.

The Commission again refused to issue a patent taking the position that their claim of ownership was not meritorious, that the Mono County judgment did not make them successors in interest of Kremkow for purposes of Public Resources

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Code section 7729 and that the state was not a party to that litigation and thus not bound by the judgment. A writ of mandate was filed in 1978, with the trial being held in the spring of 1979.

The Superior Court for Sacramento County, in which this writ of mandate was filed, denied the writ consistent with the Commission's position that the petitioner's claim to the land was not meritorious and that they could not be considered successor's in interest of the original applicant for the lands within the meaning of Public Resources Code section 7729. The petitioners have filed a timely notice of appeal in the Court of Appeal for the Third Appellate District.

Notwithstanding a favorable judgment on appeal in the case it must be recognized that there is an uncertainty as to the nature and extent of the state's interest in the subject land primarily because of the prior sale of the land in 1876 to John Kremkow. It is likely that in order to eliminate this uncertainty, further litigation would be necessary.

Therefore, because of this uncertainty as well as the uncertainty with respect to the outcome of the appeal in the present litigation a settlement has been proposed which is agreeable to the petitioners, the Commission staff and Attorney General's office. It is proposed that the Commission issue a patent for the land in the name of the original applicant, John Kremkow, consistent with the provisions of Public Resources Code section 7729, and reserving to the state 1/16 of all mineral deposits which may exist in the land. The patent would also accept the land occupied by State Highway 120 under the jurisdiction of the California Department of Transportation which traverses a portion of the subject parcel.

The petitioners have agreed to pay the state \$10,000 and dismiss their appeal in the litigation. This amount reflects the market value of the land as appraised by the Commission staff as adjusted by an amount calculated to reflect the approximate cost to the state to perfect title to the land.

The proposed settlement has been reviewed by staff and the Office of the Attorney General. It is their conclusion that the proposed settlement is in the best interests of the State of California and the public, and should therefore be adopted by the Commission.

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EXHIBITS: A. Site Map. B. Land Description.

IT IS RECOMMENDED THAT THE COMMISSION:

1. DETERMINE THAT AN ENVIRONMENTAL DOCUMENT HAS NOT BEEN PREPARED FOR THIS ACTIVITY AS SUCH DOCUMENT IS NOT REQUIRED UNDER THE PROVISIONS OF PRC 21065, 14 CAL. ADM. CODE 15057 AND 15060 AND 2 CAL. ADM. CODE 2903 AND PRC 6371.
2. AUTHORIZE THE SETTLEMENT OF THIS LITIGATION AND APPROVE THE ISSUANCE OF A PATENT IN THE NAME OF JOHN KREM'OW SUBJECT TO THE 1/16 MINERAL RESERVATION AND STATUTORY AND EXISTING LIMITATIONS, AND THE ACCEPTANCE OF \$10,000 IN CONSIDERATION THEREFORE; AND
3. AUTHORIZE THE STAFF AND OFFICE OF THE ATTORNEY GENERAL TO TAKE SUCH ACTION AS IS NECESSARY TO EXECUTE OR IMPLEMENT THE PROPOSED SETTLEMENT.

EXHIBIT "A"

W 503.968

The SW $\frac{1}{2}$ of the NW $\frac{1}{2}$ of Section 36, T1S, R31E, MDM, containing 40 acres,
more or less, in Mono County, State of California.

END OF DESCRIPTION

PREPARED MAY 22, 1980 BY TECHNICAL SERVICES UNIT, ROY MINNICK, SUPERVISOR.

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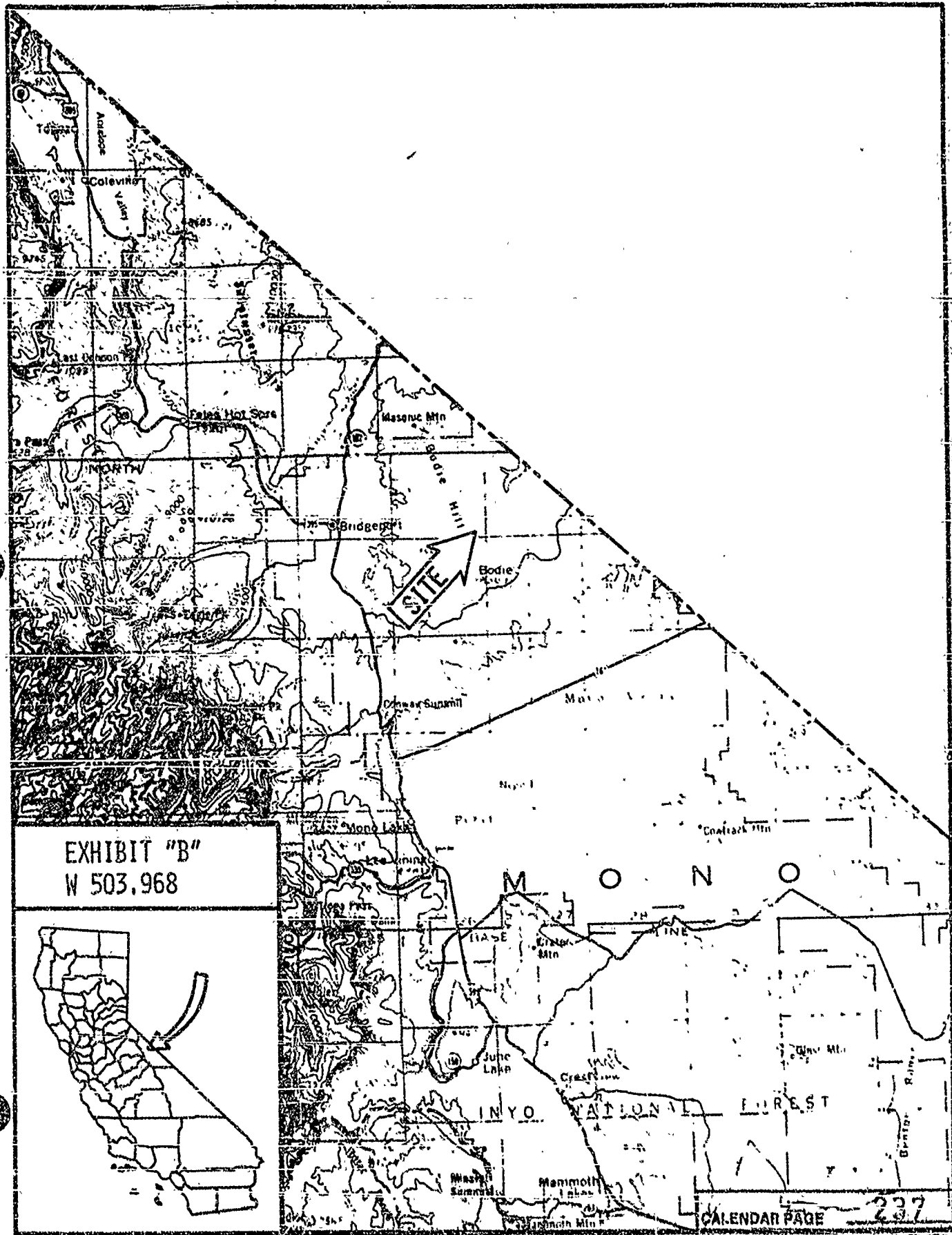


EXHIBIT "B"
W 503,968



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