February 6, 1950.

TECOPA HOT SPRINGS INVESTIGATION

At the meeting of the State Lands Commission on June 14, 1949, the following action was taken:

"36. (Patented Lands in the SE¼ of Section 33, T. 21 N., R. 7 E., S.B.M., Inyo County - Bloss Elias) The Commission was informed that on March 4, 1947, it gave authorization for filing with the Federal Government an indemnity selection on the SE¼ of Section 33, T. 21 N., R. 7 E., S.B.M., consisting of 160 acres in Inyo County, and the sale thereof after approval of the selection to Bloss A. Elias at a price of $960.00. Patent No. 19225 was issued to Mr. Elias and sent to him on April 23, 1948 after having been approved by Governor Warren.

"Subsequently, on February 16, 1949, Mr. Dean received a letter from Congressman Norris Poulson requesting the facts concerning the sale of the land and asking what could be done to restore the land containing an ostensible mineral spring, for public use. Other letters from citizens have been received complaining about the conveyance to Mr. Elias.

"Investigation has determined that the instigators of the complaints are aroused because Mr. Elias, after acquisition of the land, closed the small spring to public use, and piped it to his buildings for domestic purposes. All persons had due notice of the State selection because the selection was published in the County of Inyo as is required by the Federal Government. Under the code and patent to Mr. Elias, all minerals in the land have been reserved to the State. The land in question adjoins the large Tecopa Hot Springs on Federal land withdrawn from entry.

"In view of the fact that so many people are interested in this matter, by motion duly made and unanimously carried, a resolution was adopted authorizing the Executive Officer to hold a public hearing in the locality concerned, at which all interested persons including Federal and County officials, would be heard."

The Commission took further action with regard to this matter on July 26, 1949 as evidenced by the following extract from the minutes of the meeting:

"28. (Hearing re Sale of Federal Lands in Inyo County - S.D.) The Commission was informed of complaints arising out of the sale of the SE¼ of Section 33, T. 21 N., R.7 E., S.B.M., to Mr. Bloss A. Elias at Tecopa Hot Springs, California. In view of these complaints, the Commission authorized the Executive Officer to hold a public hearing in the locality concerned at which all interested persons would be heard. Investigations subsequent thereto have indicated that at least one other sale of lands in that locality and possibly others had been made by the State.

"Upon motion duly made and unanimously carried, a resolution was adopted authorizing the Executive Officer to extend the scope of inquiry at the proposed Public Hearing so as to cover other sales of lands in that locality in which the State Lands Commission might have been involved."

In compliance with these two actions a public hearing was held (pursuant to notice issued under date of November 1, 1949) on November 15 and 16, 1949, at Shoshone, California, a few miles distant from the properties involved. A large number of persons attended and thirty witnesses appeared in support of or opposition to the transaction. At the conclusion of the hearing engineers of the Division of State Lands inspected the properties, examined the sources of water under controversy, measured temperatures and volumes of discharge, and took samples of water which were subsequently analyzed and reported upon by Truesdail Laboratories, Inc., of Los Angeles.

Subsequently the official records of the Division of State Lands relating to the transactions were examined in detail, also copies of certain records of the Bureau of Land Management, Department of the Interior.

The following report summarizes the findings of fact as established by the report of the hearing, the field examination, and the review of the official records and presents pertinent conclusions and recommendations.

BLOSS A. ELIAS TRANSACTION

Summary of Official Action

5/8/46	Mr. Bloss A. Elias deposited $100.00 in the Sacramento Office of the Division of State Lands to cover filing fee and expenses in connection with purchase of SE¼ of Section 33, T. 21 N., R. 7 E., S.B.M., containing 160 acres in Inyo County.
6/18/46	A.P. Ireland, Sacramento Office, Division of State Lands requests Los Angeles office advice as to whether inspection and appraisal shall be made or price should be fixed at $5.00 per acre.
7/2/46	Memorandum in Los Angeles office, H.E. George to J. Stuart Watson fixing appraisal at $6.00 per acre (office determination based on assessed valuation of adjoining lands).
1/11/47	Ireland advises Elias that sale price is fixed at $6.00 per acre and requests deposit of $960.00; also advises Elias that he is not to occupy land until notified in writing that he may do so.
1/27/47	Ireland receives $960.00 from Elias, also letter of relinquishment of homestead application; also formal application for purchase accompanied by "Water Hole" affidavit of January 18, 1947.
2/6/47	State application for selection filed with Sacramento Office, Bureau of Land Management; also "Water Hole" affidavit, homestead relinquishment, and necessary filing fees.
3/4/47	State Lands Commission confirmed selection and authorized sale at the price of $960.00 upon listing of lands to State.
6/16/47	Field Examiner, Bureau of Land Management, inspects property, notes improvements and occupancy by Elias and advises him of trespass; does not notify State.

7/7/47	State notified by Sacramento Land Office of allowance of application and instructed State Lands Division to publish notice in Owens Valley Progress Citizen; steps taken accordingly.
7/18/47	First publication of notice in Owens Valley Progress Citizen.
7/22/47	Sworn testimony of applicant as required by Section 7701, Public Resources Code taken by A. P. Ireland. Certificate of Purchase issued by Division of State Lands.
8/22/47	Expiration of five-week period of published notice; affidavit of publication received and transmitted to Bureau of Land Management.
9/18/47	County Recorder certificate of base land sent to Bureau of Land Management.
10/28/47	Protest against proposed sale by William E. Hutchins received by Ireland; transmitted to Los Angeles office with suggestion that Commission may want to investigate; no record of any action being taken in Los Angeles.
12/12/47	Protest received by Ireland from George H. Francis; Ireland replied December 19, 1947 to effect he was not informed as to existence of springs on land.
1/14/48	Francis replies giving definite advice as to existence of springs. Ireland's answer was to the effect that the Bureau of Land Management had advised him that subject lands had not been withdrawn on account of the existence of hot springs.
2/16/48	Protest received by Ireland from William E. Hutchins who also objected to occupancy by Elias. Answered by Ireland in manner similar to reply to Francis on March 12, 1948, and refers writer to Bureau of Land Management.
3/17/48	Land listed to State by United States; Certificate of Purchase surrendered by Elias.
4/22/48	Patent signed by Governor.

Analysis of Complaints and Evidence

The numerous letters of complaint received both before and subsequent to the completion of the transaction may be summarized into a number of contentions of illegal or improper action by Mr. Elias or by the State. The evidence available with respect to each of these contentions has been reviewed and findings made as follows:

Complaints Against Mr. Elias:

1. The property contained hot or other springs having water of curative value.

Testimony of witnesses is inconclusive as to the curative value of the waters on the property except possibly through thermal action. It is conclusive that there has been a source of hot water (in excess of 100° Fahrenheit) since 1914. Observations by State Lands Division of November 17, 1949 show a temperature of 115° F. at the bottom of the water hole and of 112° F. at 12" below the surface. Laboratory analyses indicate the presence of excessive amounts of arsenic and of other constituents beyond standards of potability, thus throwing doubts on the curative value of the water.

2. The property contained a spring or water hole.

Testimony of witnesses (uncontroverted) was to the effect that as early as 1914 water flowed out of the ground in small quantities. More recently the source of water has been improved by excavation at various times. When the property was acquired by Mr. Elias the discharge was estimated by him at about four gallons per minute. Measurements by the State Lands Division on November 17, 1949, gave a discharge of 8.5 gallons per minute. Testimony presented at the hearing and inspection of the property and adjoining lands establish the fact that low mounds of earth, or domes, are prevalent in which water may be found by a comparatively small amount of excavation. It is, therefore, a safe conclusion that the Squaw Hole was largely if not entirely a man-made source of water and therefore not a "spring".

It is conclusive that the property did contain a "water hole" at the time Mr. Elias first applied for it.

3. Mr. Elias knew of such condition prior to and at the time of his applying for the property.

At the hearing Mr. Elias testified as to his knowledge of the existence of a source of water on the property and that the water was warm and that he knew these things prior to applying for the property. In the "water hole" affidavit which he signed on January 18, 1947, he stated "In the NW¼ of the SE¼ of Section 33, T. 21 N., R. 7 E., S.B.M., there is a trickle of water probably 4 Gal. minute - man developed." There is no conclusive evidence that Mr. Elias knew the waters had curative properties.

4. In executing the "Water Hole" affidavit required by the Federal Government Mr. Elias was guilty of fraud, deceit, and misrepresentation.

On January 18, 1947, Mr. Elias executed an affidavit (Exhibit D) which contained the following statement:

"I, Bloss A. Elias, of Tecopa, Inyo County California having made application to the State of California for SE¼ of Section 33, T. 21 N., R. 7 E., S.B.M., do solemnly swear that I am well acquainted with the character of said land and with each and every subdivision thereof, having personally examined same; that there is no spring or water hole upon any portion of said land; that no hot spring or other springs having waters possessing curative properties exist upon said land. In the NW¼ of the SE¼ of Section 33, T. 21 N., R. 7 E., S.B.M., there is a trickle of water probably 4 Gal Minute - Man Developed.

Bloss A. Elias"

Since Mr. Elias knew at the time that the water was hot he did not give full information; however, his statement was not false because he did not know whether or not the hot water possessed curative properties.

5. The public acquired rights to the use of the water on subject property by years of prior use.

The use of the waters on the property for bathing or other purposes from the year 1914 to the time of acquisition by Mr. Elias was conclusively established by testimony at the hearing.

6. Someone was actually living on the land on or prior to July 22, 1947.

One witness (Enders) testified at the hearing of occupying intermittently a shack on the property prior to Christmas 1947 when Mr. Elias refused to permit her to use it. The testimony as to actual times of occupancy is indefinite and inconclusive.

A report of the Field Examiner, Bureau of Land Management, Department of Interior dated February 23, 1948, states that a field investigation on June 16, 1947, showed Mr. Elias as living on the land in a trailer without wheels, with roof and porches added.

7. In executing the affidavit of July 22, 1947 Mr. Elias was guilty of fraud, deceit and misrepresentation.

Section 7701 of the Public Resources Code requires that the applicant answer under oath such interrogatories as may be put to him regarding his application. The standard form of interrogatory used by the Division of State Lands contains, among others, the following question:

"Have you made any improvements on the land; or raised crops thereon? If so, what?"

To this question Mr. Elias answered "no" in the affidavit he executed on July 22, 1947. Another question reads:

"Is anyone living on the land at the present time?" Mr. Elias answer to this question was "No". Against these answers was the statement by the Field Examiner, Bureau of Land Management, as to the improvements made and in use by Mr. Elias on June 16, 1947.

Mr. Ireland advises that these questions were intended to develop facts as to adverse occupancy and not occupancy by the applicant. On this understanding there was no fraud, deceit or misrepresentation.

8. In signing the application dated January 18, 1947 Mr. Elias was guilty of fraud, deceit and misrepresentation.

The form of application used was a sworn statement which includes the following: "There is no occupation of said land adverse to any that I have."

The adverse occupancy contemplated by the form used is based on Section 7355 P.R.C. which gives settlers a sixty day priority in cases of filing applications for acquisition of lands suitable for cultivation. The lands involved were not suitable for cultivation; furthermore, there has been no proof of adverse occupation. No fraud, deceit, or misrepresentation was committed by Mr. Elias in this respect.

9. Mr. Elias occupied the land illegally prior to receipt of the patent, and illegally excluded the public therefrom.

Evidence is conclusive that Mr. Elias occupied and lived on the property from at least June 16, 1947 and prohibited others from entering upon it and from using the waters. He had been definitely advised in writing on January 20, 1947 by Mr. Ireland not to occupy the property until he had written authority to do so; he was again advised of his trespass on June 16, 1947 by the Field Examiner of the Bureau of Land Management. Mr. Elias' occupancy prior to the date the land was listed to the State (March 17, 1948) was in disregard of instructions given early in the negotiations. His trespass on federal lands was known by the Bureau of Land Management which had jurisdiction in the matter.

10. There exists at least a strong claim for a lease to the property by others.

Two of the complainants, Mr. George H. Francis and Mr. James H. Francis assert a claim to a prior and over-riding lease to the property. The lease was alleged to have been made by the United States, Bureau of Land Management. The lease was not presented in evidence at the hearing, nor later produced as promised by the Francis brothers. Evidence to the contrary exists in the files of the Division of State Lands in an original letter dated February 24, 1947 signed by the Director of the Bureau of Land Management in which the lands under lease to the Francis brothers are described as one tract located in the SE$\frac{1}{4}$ of SW$\frac{1}{4}$ of Section 33, T. 21 N., R. 7 E., S.B.M. The Elias lands are all in the SE$\frac{1}{4}$ of Section 33, not the SW$\frac{1}{4}$.

Complaints against the State of California:

1. The notice of selection and proposed sale was not properly posted and advertised.

The posting of the notice of selection and proposed sale is a federal matter and was handled by the Bureau of Land Management of the Department of the Interior by posting a copy in the Sacramento office of that Bureau. Advertising was done by the Sacramento office of the Division of

State Lands acting as agent for and under the instructions of the Bureau of Land Management. The latter furnished the copy and gave instructions that the advertisement be published in the Owens Valley Progress Citizen at Lone Pine, California. Five consecutive publications were directed at weekly intervals. These instructions were accurately carried out. The first publication appeared on July 18, 1947, the four succeeding ones were published as stipulated, and affidavit of publication was received on August 22, 1947 and transmitted to the Bureau of Land Management. The State performed its full duty in this respect and did so properly.

2. Complaints against the transaction were filed with the State as early as October 26, 1947, others were filed prior to completion of the transaction.

The testimony presented at the hearing, as well as the records of the Division of State Lands, show conclusively that complaints against the transaction began to be filed on October 26, 1947 and have continued intermittently since. Letters of complaint received in the Sacramento office before April 22, 1948, the date of execution of the patent by the Governor, were as follows:

October 26, 1947	William E. Hutchins
December 12, 1947	George H. Francis
January 14, 1948	George H. Francis
February 16, 1948	William E. Hutchins.

3. Upon receipt of these complaints negotiations should have been suspended and investigations made.

Upon receipt of the first two letters, Mr. A.P.Ireland, in charge of the Sacramento Office of the Division of State Lands advised the writers to the effect that he was not informed as to whether there were any springs on the land. In reply to Mr. Francis' letter of January 14, 1948, Mr. Ireland answered that at the time the application of Mr. Elias was filed Mr. Elias had executed an affidavit to the effect that no such springs existed on said lands and at about that time the Bureau of Land Management had advised him (Ireland) that the only withdrawal on account of hot springs in that vicinity was for an adjoining tract and not the Elias quarter section. The reply to Mr. Hutchins' letter of February 16, 1948 was to the same effect, but went further and referred the writer to

the Sacramento office of the Bureau of Land Management as the proper place to file complaints. There is no record that Mr. Ireland or any other employee of the State has sent copies of this correspondence to the Bureau of Land Management. However, Mr. Ireland had advised that office orally of these complaints shortly after the receipt of the Hutchins' letter. He also forwarded a copy of Mr. Hutchins' letter of October 27, 1947 to the main office of the Division of State Lands at Los Angeles - Attention: J. Stuart Watson, suggesting the possibility of an investigation. There is no record of any action having been taken in response to that suggestion.

It is concluded that both Mr. Ireland and Mr. Watson made errors in judgment in not pursuing the matter more vigorously when the complaints were received. The very least that should have been done would have been to make an official reference of the complaints to the Bureau of Land Management. The State had a moral duty to see that it would not become a party to a transaction that would be contrary to the provisions of some Federal statute or rule of which it had knowledge. Furthermore, since the good faith of the transaction was questioned, the Division of State Lands had a duty to perform to see that the provisions of Section 7703 P.R.C. were complied with. In my opinion the complaints were of sufficient gravity to have warranted suspension of negotiations and an investigation by the State.

4. Had an investigation been made the transaction would not have been completed.

Had an investigation been made in the fall or winter of 1947, similar to the one now being reported upon, it is doubtful if the transaction would have been completed in the time, manner and form with which it was consummated. An inspection of the property, measurement of temperature and quantity of flow of water, and actual knowledge of the trespass by Mr. Elias would have prompted a more detailed inquiry and the least that might have been expected would have been a substantial delay in completion of the transaction.

Conclusions

As far as Mr. Elias is concerned there is no conclusive evidence of misrepresentation in the transaction. He did not give full information with respect to his occupancy and improvements of the subject lands, nor as to one of the characteristics (temperature) of the water on the land. Intention to deceive has not been established. On the part of the State several errors in procedure were made:

1. Section 7701 P.R.C. requires the applicant before approval of the application by the Commission, to "appear before the Commission in person, or before some person authorized to administer oaths, * * * and answer, under oath, such interrogatories as may be put to him regarding his application." In this case the Commission approved the application on March 4, 1947; the interrogatory was executed on July 22, 1947. This procedure was therefore contrary to the provisions of Section 7701 P.R.C.

2. No inspection was made of the subject property by the State until long after the patent had been issued; consequently no check was made by the State as to the accuracy and adequacy of the information supplied by the applicant.

3. The complaints received by the Sacramento office of the Division of State Lands as to the improperness of the transaction before the issuance of the patent should have been promptly investigated by the State and officially referred to the Bureau of Land Management, Department of the Interior, and further negotiations suspended pending the results of such action.

The United States Bureau of Land Management should have advised the State of the conditions revealed by its Field Examiner as of June 16, 1947 and then collaborated with the State to insure that the entire transaction was being conducted properly.

Recommendations

1. It is recommended that a copy of this report including a transcript of the hearing be transmitted to the Bureau of Land Management Department of Interior for its information.

2. It is further recommended that the Commission adopt the policy of withholding approval of sales of lands, whether they be school, lieu, or exchange lands until all affidavits are filed, examined, and found to be correct and adequate, and an appraisal has been made after field examination by the State or one of its agents, and also until after the five weeks period of publication of notice has expired; furthermore, that no certificates of purchase be issued until after such final approval by the Commission.

3. It is recommended that the Commission instruct the staff of the State Lands Division to take prompt and positive action with respect to any complaints received regarding the conduct of its affairs.

4. Mr. Elias has been requested to restore to public use waters and facilities equivalent to those in existence at the time he acquired the property. This he has agreed in writing to do on or before September 1, 1950. It is therefore recommended that the case be closed with this understanding.

HARRY W. ROSENBERG TRANSACTION

SUMMARY OF OFFICIAL ACTION

3/18/41 - Application of Harry Seldon Rosenberg of Death Valley, Calif. to purchase N½ of NE¼ and NE¼ of NW¼ of Section 4, T. 20 N., R. 7 E., S. B. M., at a price of $5.00 per acre, paid in advance. Received and filed in Division of State Lands.

3/18/41 - Application of State to U. S. Land Office made in behalf of Rosenberg, using as base school lands in Mono National Forest. All necessary affidavits, including spring or water hole affidavit were furnished by State applicant and were forwarded to the United States Land Office with the State application.

9/10/42 - State's application was returned to United States Land Office at Sacramento for allowance.

11/4/42 - County Recorder's Certificate forwarded to the United States Land Office.

11/6/42 - Publication completed and

11/27/42 - Affidavit of publication forwarded to United States Land Office.

12/16/42 - Testimony of applicant taken as required by 7701 P. R. C.

1/5/43 - Date of certificate of purchase which was issued to Rosenberg.

9/8/43 - Selected lands listed (conveyed to State)

11/1/43 - Patent issued to Rosenberg reserving all minerals to State.

Analysis of Evidence

No complaints, written or otherwise, had been registered with the State with reference to this transaction; however, there was an apparent similarity to the Elias case so accordingly testimony was requested and presented at the hearing regarding it, the official records of the State have been examined, and the characteristics of the source of water on the property were determined

by field and laboratory examinations. Findings are as follows:

As to the property:

The property involved contains 119.96 acres of land with characteristics similar to those of the land acquired by Mr. Elias. At the present time there is an improved "water hole" producing flowing water in the amount of about three gallons per minute having a temperature of 108° F. at the bottom of the well. This water flows by gravity to a small resort operated by Mr. Rosenberg where it is used for domestic purposes. In addition, there are two smaller cool water wells from which the water is pumped for domestic purposes. Laboratory analysis of the hot water shows a similarity of its constituents to those of the Elias and government waters except that it is closer to meeting the standards of potability especially with respect to its arsenic content. The water cannot be considered curative except through thermal effect.

Mr. Rosenberg "prospected" the property for water in 1939 and during that year blasted an excavation at the site of the present hot water hole. He thus made the initial development which has later been improved to its present condition.

There is no record of use of this source of hot water by the public for any purpose, and no testimony was presented to the effect that there ever had been any such use.

As to Mr. Rosenberg:

Mr. Rosenberg testified that he filled in the well he had dug and stopped the flow of water before applying for the purchase of the land so that he could execute the "water hole" affidavit without exception. Neither the official records nor the testimony presented indicate that there was any other irregularity or misrepresentation in the transaction as far as Mr. Rosenberg is concerned.

As to the State of California:

All steps taken by the State were in accord with the statutes except that there is no record of the approval by the State Lands Commission of the selection and sale of the lands involved. Minutes of commission meetings between March 18, 1941 (the date of the first application by Mr. Rosenberg) to date have been searched and the specific action required by Section 7703 P. R. C. is not of record.

The records of the Division do show, however, that the Certificate of Purchase was dated January 5, 1943, and was executed by the then Executive Officer, P. S. Ottoson, on or before January 8, 1943. No specific delegation of authority is of record for this action. However, the Commission, on August 16, 1940, in defining the scope of authority of the incumbent Executive Officer stated:

> "The Executive Officer shall sign all requests to the Governor for execution of patents in all cases wherein lands of the State have heretofore been sold but patent not issued, and shall issue indemnity certificates for lieu lands and certificates of purchase, but he shall have no power to sell or authorize the sale of other lands of the State including Sections 16 and 36 without the express authorization of the State Lands Commission."

This delegation of authority was confirmed and extended to apply to the position of Executive Officer by the Commission at its meeting of August 28, 1941. There is no record of any change in this delegation up to the time of execution of the Certificate of Purchase by Mr. Ottoson.

CONCLUSIONS:

It is concluded that this transaction was entered into by the applicant and carried to consummation properly except for his concealment of the facts about his discovery of water. However, had he reported those facts at the time of applying for the property there is no doubt but what the sale would have taken place anyway inasmuch as the existence of a small man-made water hole was not of material significance.

The State's procedure was probably in error in that an approval of the sale was never specifically given by the State Lands Commission. It is believed that the wording of a general authority was construed by the Executive Officer at that time in such a manner as not to limit his power to sell exchanged lands.

RECOMMENDATIONS:

It is recommended that the procedural defect in this transaction, i. e., lack of formal approval by the Commission of the sale of the subject lands to Mr. Rosenberg, be remedied as far as possible by the adoption of the following resolution:

The action of the staff of the Division of State Lands in approving on December 22, 1942, the sale of the NE$\frac{1}{4}$ of the NW$\frac{1}{4}$ and the N$\frac{1}{2}$ of the NE$\frac{1}{4}$ of Section 4, T. 20 N., R. 7 E., S. B. M., containing 119.96 acres at a price of $5.00 per acre and with full mineral reservation to the State, to Mr. Harry W. Rosenberg is hereby confirmed and approved; the execution and issuance of the Certificate of Purchase under date of January 5, 1943, for these same lands is likewise approved and confirmed.