

MINUTE ITEM

17. RESCISSION OF RESOLUTION OF JANUARY 21, 1960; RENEGOTIATION OF SALE PRICE FOR SWAMP AND OVERFLOWED LAND, TULARE COUNTY; AUTHORIZATION FOR ISSUANCE OF PATENT TO ELINOR H. BLACK - S.W.O. 7755.

After consideration of Calendar Item 8 attached, and upon motion duly made and unanimously carried, the following resolution was adopted:

THE COMMISSION:

1. RESCINDS THE RESOLUTION IN MINUTE ITEM 21 OF JANUARY 21, 1960 (PAGE 5595);
2. APPROVES A NEGOTIATED SALES PRICE OF \$75 PER ACRE FOR THE LAND INVOLVED;
3. FINDS THAT THE LAND IS SUITABLE FOR AGRICULTURE WITHOUT ARTIFICIAL IRRIGATION; AND
4. AUTHORIZES THE EXECUTIVE OFFICER TO PROCEED WITH THE ISSUANCE OF A PATENT TO THE ACTUAL SETTLER, ELINOR H. BLACK, IN ACCORDANCE WITH THE PROVISIONS OF SECTION 2303 OF TITLE 2, DIVISION 3, OF THE CALIFORNIA ADMINISTRATIVE CODE, FOR THE CASH AMOUNT OF \$238.50, COVERING 3.18 ACRES OF LAND, EMBRACED IN SWAMP AND OVERFLOW SURVEY 1357, TULARE COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 5, T. 18 S., R. 24 E., M.D.M.; THENCE WEST 9.83 CHAINS TO THE MEANDER LINE; THENCE SOUTH  $56\frac{1}{4}^{\circ}$  EAST 11.82 CHAINS; THENCE NORTH 6.57 CHAINS TO THE PLACE OF BEGINNING.

Attachment  
Calendar Item 8 (4 pages)

CALENDAR ITEM

8.

RESCISSION OF RESOLUTION OF JANUARY 21, 1960; RENEGOTIATION OF SALE PRICE FOR SWAMP AND OVERFLOWED LAND, TULARE COUNTY; AUTHORIZATION FOR ISSUANCE OF PATENT TO ELINOR H. BLACK - S.W.O. 7755.

The State Lands Commission, at its meeting of January 21, 1960 (Minute Item 21, page 5595), adopted a resolution authorizing the Executive Officer, pursuant to the authority of Public Resources Code Section 7729, to issue a patent in the name of Samuel Simon upon receipt of the unpaid principal balance of \$2.55, plus accumulated interest in the amount of \$7.85 and patent fees in the amount of \$11, for a total of \$21.40, for the land embraced in Swamp and Overflowed Survey 1357, Tulare County, described as follows:

Beginning at the northeast corner of the southwest quarter of the northeast quarter of Section 5, T. 18 S., R. 24 E., M.D.M.; thence west 9.83 chains to the meander line; thence south  $56\frac{1}{4}^{\circ}$  east 11.82 chains; thence north 6.57 chains to the place of beginning, containing 3.18 acres.

The Commission's action was taken as the result of consideration of Calendar Item 18, which is incorporated herein as follows:

"REQUEST FOR PATENT, SWAMP AND OVERFLOWED SURVEY 1357, TULARE COUNTY, TITLE INSURANCE AND TRUST COMPANY - S.W.O. 7492.

"A request has been received from the Title Insurance and Trust Company of Visalia, California, for the issuance of a patent to certain swamp and overflowed lands located in Section 5, T. 18 S., R. 24 E., M.D.M., identified as Swamp and Overflowed Survey 1357, Tulare County, for which a certificate of purchase was issued on April 4, 1874.

"The facts are as follows: Application was made by Samuel Simon to purchase the following-described parcel:

Beginning at the northeast corner of the southwest quarter of the northeast quarter of Section 5, T. 18 S., R. 24 E., M.D.M.; thence west 9.83 chains to the meander line; thence south  $56\frac{1}{4}^{\circ}$  east 11.82 chains; thence north 6.57 chains to the place of beginning, containing 3.18 acres.

"The application was approved by the State Surveyor-General on February 11, 1874, and, subsequently, on April 4, 1874, Certificate of Purchase No. 4032 was issued to the applicant upon the payment of \$0.83, being 20% of the purchase price (\$3.18) and interest at the rate of 7% on the balance for the remainder of 1874. The records of the State Lands Division show that no further payment was made by the applicant or his assigns, and that there remained a principal unpaid balance of \$2.55 plus interest.

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"An act was approved May 24, 1917 (Chapter 602, Stats. 1917) to provide for the forfeiture of land sold by the State prior to May 1, 1911, for which full payment was not made at time of purchase or upon which any interest upon any part of the unpaid portion of the purchase was delinquent. However, the statute provided that constructive notice by the State of the pending forfeiture must be given to the applicant or to any person known to have an interest in the land, and that a list of such lands must be filed with the county recorder in the county in which such lands were located.

"Therefore the issue is: By reason of the fact that the State Lands Division records do not show that constructive notice of forfeiture was given by the State Surveyor-General to the purchaser as provided by Chapter 602, Stats. 1917, are the successors in interest of the original applicant, Samuel Simon, who have occupied the land for approximately 60 years and who have paid taxes thereon, entitled to make the unpaid principal and accumulated interest payments and to demand issuance of patent by the State?

"The matter was referred to the office of the Attorney General, and resulted in the issuance of an informal opinion on August 28, 1959. The opinion states that the land in question was not forfeited to the State since the statutory requirement that constructive notice of pending forfeiture be given to the owner of the land was not followed. However, the successors in interest to the certificate of purchase still stand in default, and any proffered payments of unpaid principal and accumulated interest may, in the State's discretion, be rejected.

"In view of the foregoing, the land does not appear to be forfeit; however, the State must receive full payment for the certificate of purchase in order that a patent can be issued under Section 7729 of the Public Resources Code. The successors in interest of the original applicant have requested the issuance of a State patent.

"IT IS RECOMMENDED THAT THE COMMISSION AUTHORIZE THE EXECUTIVE OFFICER TO ISSUE A PATENT, PURSUANT TO THE AUTHORITY OF PUBLIC RESOURCES CODE SECTION 7729, IN THE NAME OF SAMUEL SIMON, UPON RECEIPT OF THE UNPAID PRINCIPAL BALANCE OF \$2.55, PLUS ACCUMULATED INTEREST IN THE AMOUNT OF \$7.85 AND PATENT FEES IN THE AMOUNT OF \$11, FOR A TOTAL OF \$21.40, FOR THE LAND DESCRIBED AS:

BEGINNING AT THE NORTHEAST CORNER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 5, T. 18 S., R. 24 E., M.D.M.; THENCE WEST 9.83 CHAINS TO THE MEANDER LINE; THENCE SOUTH  $56\frac{1}{4}^{\circ}$  EAST 11.82 CHAINS; THENCE NORTH 6.57 CHAINS TO THE PLACE OF BEGINNING, CONTAINING 3.18 ACRES.

"THE PATENT IS TO CONTAIN THE APPLICABLE STATUTORY AND CONSTITUTIONAL RESERVATIONS."

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The required amount for issuance of the patent was submitted to the State Lands Division by the Title Insurance & Trust Company of Visalia. Accordingly, a patent was prepared for execution by appropriate State officers in accordance with the aforesaid minute item. The patent was then submitted to the Sacramento office of the Attorney General for approval as to form. An informal letter opinion, dated August 9, 1960, was then rendered by Deputy Attorney General Raymond H. Williamson, in which he referred to an earlier opinion by a former Deputy Attorney General, McKisick. The conclusion was reached that by reason of the wording of the forfeiture provisions in the statute (Chapter 602, Stats. 1912), the original Certificate of Purchase involved under this application is subject to being declared null and void for failure to pay principal and interest within the period prescribed by statute. This determination expresses the opposite view to that expressed in the informal opinion dated August 28, 1959, upon which the original calendar item and recommendation were based. Subsequently, by letter dated August 12, 1960, the draft of patent was returned unapproved by the office of the Attorney General.

During the course of review of the problem with the Attorney General's office, it was concluded that an inspection of the parcel, plus a review of the title status, should be made. Accordingly, the staff assembled additional information concerning the character of the land, its present value, and an abstract of the chain of title. The investigation and inspection indicates that: (1) The current-day market value of the land is \$175. per acre; (2) the land is suitable for agriculture without artificial irrigation; (3) there was no complete record chain of title until title to the land vested in the Harrell family by a Decree of Distribution in 1899 from the estate of Samuel Simon, the original applicant.

In view of all the circumstances involved, particularly the questionable status of the original Certificate of Purchase issued to Samuel Simon, it is now the opinion of the office of the Attorney General that the correct procedure would be for the Commission to sell the land on a negotiated basis to the actual settler, in accordance with the authority for sale of land suitable for cultivation without artificial irrigation set forth in Section 2303, Title 2, Division 3 of the California Administrative Code (rules and regulations of the State Lands Commission).

A staff member met on August 25, 1960, with Mrs. Elinor H. Black, who has succeeded to the Harrell interests in the subject land and with Mr. Robert Stewart of the Title Insurance and Trust Company of Visalia.

The record facts were presented to these parties, particularly as to the reasons why the Attorney General's office refused to approve the patent under the original application. They were made aware of their rights to bring a Mandamus action to enforce issuance of the patent. After consideration of the facts and such factors as occupation and payment of taxes on the land by the Harrells for sixty years, it was agreed that Mrs. Black, the occupant, would file a purchase application under Section 2303(e), Title 2, Division 3 of the California Administrative Code, as an actual settler, at a negotiated price of \$75 per acre. The patent to be issued would be subject to all applicable statutory and constitutional reservations.

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The purchase application, bearing a date of September 16, 1960, has now been received by the State Lands Division, together with the negotiated cash offer of \$75 per acre.

IT IS RECOMMENDED THAT THE COMMISSION:

1. RESCIND THE RESOLUTION IN MINUTE ITEM 21 OF JANUARY 21, 1960 (PAGE 5595);
2. APPROVE A NEGOTIATED SALES PRICE OF \$75 PER ACFT FOR THE LAND INVOLVED;
3. FIND THAT THE LAND IS SUITABLE FOR AGRICULTURE WITHOUT ARTIFICIAL IRRIGATION; AND
4. AUTHORIZE THE EXECUTIVE OFFICER TO PROCEED WITH THE ISSUANCE OF A PATENT TO THE ACTUAL SETTLER, ELINOR H. BLACK, IN ACCORDANCE WITH THE PROVISIONS OF SECTION 2303 OF TITLE 2, DIVISION 3 OF THE CALIFORNIA ADMINISTRATIVE CODE, FOR THE CASH AMOUNT OF \$238.50, COVERING 3.18 ACRES OF LAND, EMBRACED IN SWAMP AND OVERFLOW SURVEY 1357, TULARE COUNTY, DESCRIBED AS

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