MINUTE ITEM

35. CONSIDERATION OF APPEAL TO ADVERSE DECISION OF THE UNITED STATES BUREAU OF LAND MANAGEMENT REJECTING STATE EXCHANGE APPLICATION NO. 74, TRINITY COUNTY - S.W.O. 6242.

Following presentation of Calendar Items 43 and 12 attached, a letter from the Board of Supervisors of Trinity County was read into the record by the Executive Officer.

Appearances:

For the Applicant:
State Senator Edwin J. Regan

Against the Applicant:
Mr. John F. Reginato, General Manager of the Shasta Cascade Wonderland Association
Mr. Jamie Smith, President of the California State Fish and Game Commission
Mr. Robert Vile, Vice-President of the California Wildlife Federation
Deputy Attorney General Jay L. Shavelson - Office of the Attorney General

The staff recommendation was approved with the understanding that the Commission was not adopting policy in regard to the item at hand, and that the Commission was allowing the applicant to complete the normal course of appeal and procedure for such matters.

UPON MOTION DULY MADE AND UNANIMOUSLY CARRIED, THE FOLLOWING RESOLUTION WAS ADOPTED:

THE COMMISSION:

1. AUTHORIZES THE EXECUTIVE OFFICER TO PROCEED WITH THE FILING OF AN APPEAL WITH THE DIRECTOR OF THE UNITED STATES BUREAU OF LAND MANAGEMENT ON THE REJECTION OF STATE EXCHANGE APPLICATION NO. 74, TRINITY COUNTY;

2. DIRECTS THE EXECUTIVE OFFICER TO INCLUDE IN THE MINUTE RECORD OF THE SUBJECT ACTION TAKEN THE CONCLUSION THAT BY AUTHORIZATION OF THE APPEAL (A) THE COMMISSION IS IN NO MANNER DETERMINING THE PUBLIC INTEREST IN HOLDING THE LAND FOR PUBLIC RECREATION PURPOSES, (B) ANY PUBLIC INTEREST IN HOLDING THE LAND FOR PUBLIC RECREATIONAL PURPOSES WILL BE EVALUATED BY THE COMMISSION IN THE LIGHT OF COMMISSION LAND-MANAGEMENT-AND-DISPOSITION POLICY AS AND WHEN THE SUBJECT LAND IS CONVEYED TO THE STATE BY THE UNITED STATES.

Attachments
Calendar Item 43 (2 pages)
Calendar Item 12 (4 pages)

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CALENDAR ITEM

43.

CONSIDERATION OF APPEAL TO ADVERSE DECISION OF THE UNITED STATES BUREAU OF LAND MANAGEMENT REJECTING STATE EXCHANGE APPLICATION NO. 74, TRINITY COUNTY - S.W.O. 6242

On September 14, 1961, in the consideration of the calendar item following (No. 12) on a decision to appeal an adverse decision by the United States Bureau of Land Management, questions were raised which can be summarized as follows:

1. What would be the effect on future policy of Commission approval of the subject appeal in the light of the present relevant provisions of the statutes and rules and regulations?

2. Would legal rights be affected in favor of the State applicant if the Commission appeals?

The office of the Attorney General has reported on these questions, again in summary, as follows:

1. Future policy of the Commission would not be affected by a decision to prosecute an appeal either (1) as to the subject application, since final approval must be given by the Commission after the land is conveyed to the State by the United States, at which time public interest must be considered, or (2) with respect to other purchase applications, since each application must be considered on its merits and what was done on some other application does not necessarily establish a precedent;

2. If the State appeals and the appeal is successful, the applicant does not have a firm right to obtain the land from the State since the Commission's determination to initiate and prosecute the appeal is not an approval of the application by the Commission.

It has also been suggested that a contrary argument might be made that, by appealing, the Commission is determining that the public interest in holding the land for public recreational purposes is subsidiary to the claims of the applicant and the purposes for which he wishes to obtain the land. Therefore, to preclude the necessity of a piecemeal land-policy determination, it is suggested that the record reflect clearly (a) that any conclusion by the Commission to pursue an appeal is restricted to the establishment of a full and clear record for the State, which is the applicant to the United States Bureau of Land Management, and (b) that any public-interest policy determination in connection with proposed disposition of the land will be considered by the Commission only in the event the appeal is successful and the land is conveyed to the State by the United States.

IT IS RECOMMENDED THAT THE COMMISSION:

1. AUTHORIZE THE EXECUTIVE OFFICER TO PROCEED WITH THE FILING OF AN APPEAL WITH THE DIRECTOR OF THE UNITED STATES BUREAU OF LAND MANAGEMENT ON

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THE REJECTION OF STATE EXCHANGE APPLICATION NO. 74, TRINITY COUNTY;

2. DIRECT THE EXECUTIVE OFFICER TO INCLUDE IN THE MINUTE RECORD OF THE SUBJECT ACTION TAKEN THE CONCLUSION THAT BY AUTHORIZATION OF THE APPEAL (a) THE COMMISSION IS IN NO MANNER DETERMINING THE PUBLIC INTEREST IN HOLDING THE LAND FOR PUBLIC RECREATION PURPOSES, (b) ANY PUBLIC INTEREST IN HOLDING THE LAND FOR PUBLIC RECREATIONAL PURPOSES WILL BE EVALUATED BY THE COMMISSION IN THE LIGHT OF COMMISSION LAND-MANAGEMENT-AND-DISPOSITION POLICY AS AND WHEN THE SUBJECT LAND IS CONVEYED TO THE STATE BY THE UNITED STATES.

CALENDAR ITEM

12.

CONSIDERATION OF APPEAL TO ADVERSE DECISION OF THE UNITED STATES BUREAU OF LAND MANAGEMENT REJECTING STATE EXCHANGE APPLICATION NO. 74, S.W.O. 6242 - TRINITY COUNTY.

On December 8, 1955, an application was filed with the Commission by Warren M. Gilzean of Junction City, Trinity County, to acquire vacant federal land described as the NE$\frac{1}{4}$ of NW$\frac{1}{4}$ of SW$\frac{1}{4}$, NW$\frac{1}{4}$ of NE$\frac{1}{4}$ of SW$\frac{1}{4}$, and Lot 12 of Section 1, T. 33 N., R. 11 W., M.D.M., containing 57.99 acres. On December 16, 1955, the Commission filed an exchange application with the United States Bureau of Land Management in accordance with the provisions of Section 8552 of the Public Resources Code and Section 8 of the Act of Congress approved June 28, 1934 (Public No. 827), as amended, offering under its application 60.125 acres of State land within Trinity National Forest, Trinity County. At that time, the values of both the selected Federal and State offered lands were approximately equal as verified by staff appraisal.

It is understood that the applicant, Warren M. Gilzean, held the subject land under federal mining laws but because of his inability to perfect title thereto directly from the United States under a mining patent, he elected to apply through the State Lands Commission in accordance with the procedure in effect at that time. Normally, lands which are acquired by the State under this procedure have been sold pursuant to competitive bidding in accordance with the rules and regulations of the State Lands Commission governing the sale of State school land.

From the date of filing of the State's application with the United States in December, 1955, the matter has been pending before the United States Bureau of Land Management. The staff appraisal completed in 1955, as a basis of filing the equal value exchange application, indicates that the land is traversed by State Highway 299 and the Trinity River. Additionally, the report shows that approximately 4$\frac{1}{2}$ acres adjacent to the highway and on the bank of the Trinity River affords an excellent potential commercial site.

A decision was rendered by the Sacramento Land Office of the United States Bureau of Land Management on May 16, 1961, rejecting the State exchange application. A copy of this decision is attached hereto as Exhibit "A". A copy of the protest by the State Department of Fish and Game is attached as Exhibit "B". Additional protests are attached.

Several petitions were filed with the United States Bureau of Land Management objecting to the disposal by the United States of the land under the State's exchange application. These objections are based upon the fact that the area is desirable and suitable for public use and therefore should be retained under the jurisdiction of the United States in order that such use may be perpetuated.

The matter is submitted at this time for a determination as to whether the Commission considers it desirable to proceed with an appeal to the Director of the Bureau of Land Management or if the Commission should forego the

filing of an appeal and withdraw its application under the circumstances, and in turn cancel the application of Warren Gilzean.

The applicant, Mr. Gilzean, is represented by State Senator Edwin J. Regan, and a copy of this calendar item is being furnished Senator Regan and all organizations and individuals listed in the attached decision in order that all parties in interest will be advised of the Commission's consideration of this matter.

IT IS RECOMMENDED THAT THE COMMISSION WITHDRAW ITS EXCHANGE APPLICATION, SERIAL NO. 051653, FILED WITH THE BUREAU OF LAND MANAGEMENT AND REJECT THE APPLICATION OF WARREN M. GILZEAN AND DIRECT THE RETURN OF ALL DEPOSITS OF THE APPLICANT EXCEPT THE $5 FILING FEE IF THE PARTIES IN INTEREST LISTED IN THE DECISION DATED MAY 16, 1961, ATTACHED HERETO AS EXHIBIT "A", WHO HAVE BEEN NOTIFIED OF THIS CALENDAR ITEM, APPEAR BEFORE THE COMMISSION AND SUBMIT EVIDENCE TO THE SATISFACTION OF THE COMMISSION THAT THE PUBLIC WOULD BE BEST SERVED BY THE RETENTION OF THE NE$\frac{1}{4}$ OF NW$\frac{1}{4}$ OF SW$\frac{1}{4}$, NW$\frac{1}{4}$ OF NE$\frac{1}{4}$ OF SW$\frac{1}{4}$ AND LOT 12 OF SECTION 1, T. 33 N., R. 11 W., M.D.M., CONTAINING 57.99 ACRES IN TRINITY COUNTY, IN PUBLIC OWNERSHIP. IF THE AFORESAID PARTIES IN INTEREST FAIL TO APPEAR BEFORE THE COMMISSION OR DO NOT OFFER EVIDENCE SUFFICIENT TO JUSTIFY THE COMMISSION'S WITHDRAWAL FROM THE TRANSACTION AND CANCELLATION OF THE APPLICATION OF WARREN M. GILZEAN, IT IS RECOMMENDED THAT THE STAFF BE DIRECTED TO PROCEED WITH THE FILING OF AN APPEAL WITH THE DIRECTOR OF THE UNITED STATES BUREAU OF LAND MANAGEMENT, WASHINGTON, D.C., IN THE USUAL MANNER.

Attachment
Exhibit "A"

EXHIBIT "A"
(Copy)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
LAND OFFICE
California Fruit Building - Room 1000
4th and J Streets
Sacramento 14, California

May 16, 1961

Certified Mail
Return Receipt Requested

D E C I S I O N

State of California
1108 O Street, Room 205
Sacramento, California : State Exchange

Application Rejected

On December 19, 1955, the State of California filed State Exchange Sacramento 051653 under the provisions of Section 8 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1272), as amended by Section 3 of the Act of June 26, 1936 (49 Stat. 1976; 43 U.S.C. Sec. 315g), under provisions of 147 2(b) Code of Federal Regulations, based upon the approximately equal value basis. The lands embraced in the exchange are described as follows: Selected land: Lot 12 (SE$\frac{1}{4}$NW$\frac{1}{4}$), NE$\frac{1}{4}$NW$\frac{1}{4}$SW$\frac{1}{4}$, NW$\frac{1}{4}$NE$\frac{1}{4}$SW$\frac{1}{4}$ Sec. 1, T. 33 N., R. 11 W., M.D.M., 57.99 acres, in exchange, offered: Pt. NE$\frac{1}{4}$NE$\frac{1}{4}$, NW$\frac{1}{4}$NE$\frac{1}{4}$ Sec. 16, T. 3 S., R. 7E., H.M., California, 60.125 acres, in the Trinity National Forest.

Through field examination a determination has been made that the subject State Exchange should not be allowed because of the inequity of values between the offered and selected lands. This value differential cannot be equaled by additional offered lands, because of the unique site characteristics of the selected lands. The lands have a high recreational public value for camping, picnics, roadside rest and excellent access to Trinity River for fishing. The selected lands have been classified for recreation and public purposes under the act of June 14, 1926. In support of the foregoing, the report also included the following information:

1. The selected land has a high present recreational use and is traversed by the main tourist highway through the area.

2. Provides the only public campground within fifteen miles either way along the Trinity River. Topography of the Trinity River is such that available recreation sites are few and far between. Many more campgrounds are urgently needed. This need will become even more critical in the near future, as Trinity, Lewiston, and Whiskeytown lakes draw thousands of more visitors.

EXHIBIT "A" (CONTD.)

3. The selected land furnished fishermen with direct access to the Trinity River and supplies some of the need for wayside facilities, camping, and picnic, as well as safety measure, off-highway parking by those wishing to enjoy the view, fish and to rest.

The following organizations and individuals have petitioned the Bureau of Land Management to retain Lot 12 (SE$\frac{1}{4}$NW$\frac{1}{4}$), NE$\frac{1}{4}$NW$\frac{1}{4}$SW$\frac{1}{4}$, NW$\frac{1}{4}$NE$\frac{1}{4}$SW$\frac{1}{4}$ Section 1, T. 33 N., R. 11 W., M.D.M. in federal ownership as a public recreation site:

California Department of Fish and Game
Shasta - Trinity National Forests
National Park Service
Trinity County Planning Commission
Shasta-Cascade Wonderland Association
Pauling L. Davis, Member of California Legislature
Trinity County Sportmen's Association

"***, the Secretary, if he elects to effect an exchange with a State on an 'equal value' basis, shall exercise his judgment in determining whether the land offered by the State actually has a valuation equal to the value of the public land selected by the State, and that he shall reject the application, if he determines that the equal values have not been met." 1/ The Department held that an application for exchange is properly rejected where the land values are disproportionate and adverse to the government. 2/

In view of the foregoing, the subject State Exchange application is rejected in its entirety.

This decision becomes final 30 days from its receipt unless an appeal to the Director, Bureau of Land Management, is filed. If an appeal is taken, there must be strict compliance with the regulations in 43 CFR Part 221 (see enclosed Form 4-1364). In the absence of an appeal within the time allowed, the case will be closed without further notice.

/s/ WALTER E. BECK
Manager

Enclosure

1/ A 25548, A 25570 State of Arizona (March 31, 1950)
2/ State of Arizona, Arizona 022845 (Jan. 27, 1961)