

43. REQUEST OF DEPARTMENT OF FISH AND GAME FOR WITHDRAWAL OF LAND FROM PUBLIC SALE (APPLICATION NO. 5553, SACRAMENTO LAND DISTRICT, S.W.O. 8217).

During consideration of Calendar Item 30 attached, the Executive Officer reported that a letter had been transmitted by the Department of Fish and Game as of October 24, 1967, withdrawing its request for the land in question; therefore, the staff recommendation should be amended, striking all except the first four lines.

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

THE COMMISSION FINDS THAT THE SALE OF SECTION 36, TOWNSHIP 20 NORTH, RANGE 13 WEST, M.D.M., MENDOCINO COUNTY, PURSUANT TO PENDING PRIVATE PURCHASE APPLICATION, IS IN THE BEST INTEREST OF THE STATE, AND DIRECTS THE STAFF TO PROCESS THE APPLICATION IN THE USUAL MANNER.

Attachment

Calendar Item 30 (4 pages)

30.

REQUEST OF DEPARTMENT OF FISH AND GAME FOR WITHDRAWAL OF LAND FROM PUBLIC SALE
(APPLICATION NO. 5553, SACRAMENTO LAND DISTRICT, S.W.O. 8217)

The current regulations governing the administration and sale of school and swamp and overflowed lands, adopted by the Commission on November 13, 1964, as Article 5, Title 2, Division 3, of the California Administrative Code, permit specified public entities; namely, cities, counties, school districts and State agencies, to request and have withdrawn from sale to the general public, for a maximum period of two years, those school and swamp and overflowed lands in which the entities may be interested. Regulations further provide that for any parcel appearing on the "sales list" for which a private purchase application has been filed, the State Lands Division shall notify all State agencies having a land-acquisition program (approximately 40 in number), ". . . soliciting a response to be received within 45 days from date of receipt of such application as to whether such agencies wish to have the land withdrawn from sale for the purpose of leasing or purchasing such lands within two years, subject to the availability of funds." Any public entity within the four groups named above can submit a request to have the lands withheld at any time up to the expiration of the 45-day period referred to, although State agencies only are required to be circularized by formal notice from the Division. If any one public entity within the four groups requests withdrawal within the 45-day period, the regulations provide for the automatic cancellation of the private purchase application and withdrawal of the land involved from sale to the general public. Section 2300(h) clearly states that at the close of the 45-day period the right or privilege of these entities to have the lands withdrawn shall terminate. At this point, the regulations provide that, following the close of the 45-day period, the three groups of public agencies enumerated in Section 6223 of the Public Resources Code; namely, cities, counties, and State agencies, must file a purchase or lease application in order to obtain the preferential right accorded by said Section 6223.

On April 6, 1966, an application to purchase Section 36, T. 20 N., R. 13 W., M.D.M., containing 640 acres in Mendocino County, was filed by a private individual pursuant to Section 2302(a) of the Commission's regulations. Immediately after the filing of the private application, State agencies were circularized with a formal notice, advising that for a period of 45 days or until 5:00 p.m., May 25, 1966, any agency could indicate whether it wishes to have the applied-for land withdrawn from sale for a period of two years for the purpose of leasing or purchasing by such agencies, subject to the availability of funds. No response was received from any of the agencies circularized within the 45-day period specified by the regulations. However, by letter from W. T. Shannon, Director of the Department of Fish and Game, dated May 31, 1966 (after close of the 45-day period), received by the State Lands Division on June 3, 1966, and with specific reference to the Division's circularized notice, the Department requested withdrawal of said Section 36 from public sale for a two-year period, during which it may purchase or lease. The Department states that the land is located adjacent to the proposed English Ridge Reservoir project; that the parcel is surrounded by Federal lands; that the English

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Ridge Reservoir is the most imminent project to be developed by the Bureau of Reclamation on the North Coast; and that the feasibility report is now nearing completion. The Division's form letter was returned, properly executed, committing the Department of Fish and Game to purchase or lease said land within two years, subject to the availability of funds.

In this instance, the Department failed to respond within the 45-day circularization period, and, instead, submitted a withdrawal request following the close thereof. The regulations provide under Section 2300(h), as noted above, that if a public entity fails to respond within the 45-day period, the right of privilege of such entity to have lands withdrawn shall terminate. Regulations further provide that thereafter any public entity enumerated in Section 6223 of the Public Resources Code may obtain the preferential purchase or lease right accorded by said Section 6223 by filing an appropriate application.

The regulatory 45-day limitation within which public entities may respond, followed by the provisions that such entities may establish their preferential purchase or lease right only by filing the appropriate application pursuant to Section 6223 of the Public Resources Code in event of failure to respond within the 45-day period, were purposely drafted into the regulations in this manner, since, during the processing of private purchase applications, it was felt the private citizen was entitled, at some point in processing, to have some assurance of reasonable success in completing his application before expending any more of his time or money in attempting to carry on a business transaction with the Commission.

Failure of public entities to properly respond within the 45-day circularization period, and instead submitting requests for withdrawal of lands after the close of such period, is, in effect, a violation of the regulations.

Recent correspondence from the State Department of Fish and Game in response to Division inquiries indicates that:

- (1) the school section here involved is outside of the reservoir and borrow area boundary; i.e., it is not within the area proposed to be inundated and therefore not vital to this phase of the project;
- (2) the section is in an area which is currently under study for possible inclusion in a wildlife-habitat development;
- (3) any final plan, when approved, is expected to become a part of the project requiring Congressional approval and appropriations.

If and when the Reservoir Project is authorized by Congress and funds appropriated therefore, it appears obvious the area within the reservoir proper will draw first priority for acquisition. The wildlife-habitat area, within which the school land parcel is situated, will, if finally approved, obviously carry a lower acquisition priority. At this point it is clear the project is in the study stage. Accordingly, no evidence has been furnished at this point to indicate that funds therefor will be appropriated by Congress within the next one, two, three, or five years.

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In the Commission's administration of these school lands in keeping with the intent and purpose of the original 1853 Grant, as amended, this then gives rise to the question of whether the Commission should forego a potential sale and loss of immediate revenue and interest, including loss of local tax base, to accommodate an indefinite and unapproved plan for an as yet unauthorized project of the United States. If this land is desired by the United States Bureau of Reclamation for use at some future date in connection with a Federal project, it is not unreasonable to require the Bureau to lease the parcel during the interim period at not less than current fair-rental value, particularly if the State is expected to withdraw the land from sale to the general public and cancel a bona fide pending purchase application.

In summary, Fish and Game does not wish to purchase or lease as originally stated under its signed commitment, and regulations do not provide a preferential purchase right to agencies of the Federal government. Accordingly, if the United States Bureau of Reclamation desires to acquire title to the State school section at some future indeterminate date, it must initiate condemnation proceedings since the Bureau obviously will not wish to be subjected to sealed competitive bidding as required by the Commission's regulations; the date of possible United States acquisition is extremely indefinite since the project involving the school section is still in the study stage and subject also to Congressional approval and appropriations; the benefits or advantages accruing to the State and the School Land Grant by withdrawal of the land, thereby causing loss of a probable sale including revenue which would be derived therefrom, have not been shown; the greater part of the two-year hold period requested in Fish and Game's memorandum of May 31, 1966, has transpired with no indication that the project is now further advanced than it was at the time of the request, with the private purchase application held in abeyance during the intervening period without action; the parcel is situated outside of the Reservoir Project proper, i.e., outside the flood and storage area, which eliminates it, for the most part, from being considered as extremely crucial or critical to the basic water-storage and flood-control project now under study by the United States Bureau of Reclamation; the parcel was appraised in 1956 at \$30 per acre including merchantable timber thereon (1,550 M.B.F.), for the total sum of \$19,200; a current appraisal would, in the opinion of the staff, substantially increase this value.

IT IS RECOMMENDED THAT THE COMMISSION:

- (1) FIND THE SALE OF SECTION 36, TOWNSHIP 20 NORTH, RANGE 13 WEST, M.D.M., MENDOCINO COUNTY, PURSUANT TO PENDING PRIVATE PURCHASE APPLICATION, IS IN THE BEST INTEREST OF THE STATE, AND DIRECT STAFF TO PROCESS THE APPLICATION IN THE USUAL MANNER.
- (2) DIRECT STAFF TO NOTIFY THE DEPARTMENT OF FISH AND GAME THAT ITS REQUEST TO WITHDRAW SUBJECT PARCEL IS REJECTED FOR THE FOLLOWING REASONS:
 - (a) THE DEPARTMENT FAILED TO RESPOND WITHIN THE 45-DAY PERIOD PROVIDED BY REGULATION.

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- (b) THE SECTION IS BEING APPLIED FOR BY THE DEPARTMENT OF FISH AND GAME ON BEHALF OF THE FEDERAL BUREAU OF RECLAMATION. THUS, THE DEPARTMENT DOES NOT INTEND TO PURCHASE OR LEASE AS ORIGINALLY STATED IN ITS SIGNED COMMITMENT, AND REGULATIONS DO NOT PROVIDE A PREFERENTIAL PURCHASE RIGHT TO AGENCIES OF THE FEDERAL GOVERNMENT.
- (c) THE INTENDED FEDERAL RESERVOIR PROJECT, FOR WHICH IT IS CONTENTED THIS PARCEL IS REQUIRED, IS STILL IN THE PLANNING STAGE AND HAS NOT YET BEEN PRESENTED TO CONGRESS FOR APPROVAL. FURTHERMORE, SUBJECT PARCEL IS OUTSIDE THE PLANNED RESERVOIR AND BORROW AREA BOUNDARY AND THUS IS NOT VITAL TO THAT PHASE OF THE PROJECT.