

MINUTE ITEM

This Calendar Item No. 31

MINUTE ITEM
31

is submitted for information
only, no action thereon
being necessary.

2/9/82
W. 9635
Mochon

PETITION FOR RECONSIDERATION OF DECISION
OF COMMISSION ACTION OF OCTOBER 30, 1980,
REGARDING THE MODIFICATION OF SURFACE
ENTRY RIGHTS IN THE SECOND COMMUNITY
OF CALIFORNIA CITY, KERN COUNTY, CALIFORNIA

During consideration of Calendar Item 31, attached, Mr. N. Gregory Taylor, Assistant Attorney General, stated that the Desert Tortoise Preserve Committee had asked to make a presentation before the Commission to request the Commission to reconsider their decision of 10/30/80 concerning release of surface entry rights in the Second Community of California City. Mr. Taylor indicated that Calendar Item 31 was presented for information only. In addition, Mr. Taylor stated that the developer of California City, Great Western Cities, had performed under the terms of the agreement approved by the Commission at its October 30, 1980 meeting.

Mr. Taylor stated it was the advice of counsel that the statute of limitations has expired with respect to reconsidering this matter. If the Commission chose to hear the comments of the Desert Tortoise Preserve Committee, it should be for information only and in no way a reconsideration of their previous action.

Mr. Robert Goodrich, representing the Desert Tortoise Preserve Committee, made a statement to the Commission.

In accordance with advice of counsel, no action was taken.

INFORMATIVE
CALENDAR ITEM

31

1/28/82
W 9635
Mochon

PETITION FOR RECONSIDERATION OF DECISION
OF COMMISSION ACTION OF OCTOBER 30, 1980,
REGARDING THE MODIFICATION OF SURFACE
ENTRY RIGHTS IN THE SECOND COMMUNITY
OF CALIFORNIA CITY, KERN COUNTY, CALIFORNIA

BACKGROUND: On October 30, 1980, by Minute Item 22, and pursuant to P.R.C. Section 6401(b), the State Lands Commission authorized execution of an agreement providing for modification of the State's surface entry rights on approximately 13,000 acres of patented school and lieu lands in the Second Community of California City. At the same time, the Commission certified the EIR that had been prepared for the project.

On October 5, 1981, Commission staff received from the Desert Tortoise Preserve Committee, Inc., a Petition for Reconsideration of (that) Decision. On November 25, 1981, staff advised Francine Lane, an attorney for the Committee, that staff would not recommend such reconsideration to the Commission for two reasons:

1. That the State Lands Commission decision of October 30, 1980, regarding modification of surface entry rights in the Second Community of California City was the subject of a Notice of Determination filed with the Secretary of the Resources Agency pursuant to Section 21108 of the Public Resources Code on November 4, 1980. No action or proceeding alleging non-compliance with CEQA by the Commission was commenced within the 30-day period provided by Section 21167 of the Public Resources Code.
2. That certain provisions of the "Agreement Regarding State's Modification of Surface Entry Rights in California City, Kern

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County, California" have been consummated and relied upon by the parties thereto. That agreement was executed by the parties and on January 30, 1981, was recorded in Book 5348, page 1917 of the Official Records of the County of Kern.

On December 15, 1981, Commission staff received from Robert Goodrich, an attorney for the Committee, a written statement in support of the Committee's petition and a request to make an oral presentation to the Commission at its December 17, 1981, meeting. Because of the length of the calendar for that date, Mr. Goodrich was advised that his request would be submitted to the Commission at its January, 1982 meeting.

As stated above, the statutory period during which an action or proceeding alleging that the subject Commission action did not comply with CEQA has expired. Section 21167(e) of the Public Resources Code provides that such actions must be commenced within 30 days after the filing of the Notice of Determination on the project; in this case, by December 4, 1980. Formal Commission reconsideration of the subject decision of October 30, 1980, and action may reopen the statutory period for challenging the compliance of said action with CEQA. On this basis, and in light of the reliance of the parties upon the agreement, staff recommends against formal Commission reconsideration of and action regarding the subject action of October 30, 1980. Further, it should be made clear that any Commission decision to allow oral or written presentations on this matter does not constitute a waiver of any rights of the State of California, acting by and through the State Lands Commission, including, but not limited to, the statute of limitations set forth in P.R.C. Section 21167.