

MINUTE ITEM

15. REQUEST FOR ISSUANCE OF SUPPLEMENTAL PATENT, COVERING LOCATION 305, EL DORADO COUNTY, IN THE NAME OF MICHAEL KIMERER - S.U.O. 7932.

After consideration of Calendar Item 16 attached, and upon motion duly made and unanimously carried, the following resolution was adopted:

THE EXECUTIVE OFFICER IS AUTHORIZED TO PROCEED WITH ISSUANCE OF A SUPPLEMENTAL PATENT COVERING THE $N\frac{1}{2}$ OF $NW\frac{1}{4}$ OF $SW\frac{1}{4}$ OF SECTION 16, T. 10 N., R. 12 E., M.D.M., EL DORADO COUNTY, IN THE NAME OF THE ORIGINAL APPLICANT, MICHAEL KIMERER, SUBJECT TO A RESERVATION OF ALL MINERALS IN FAVOR OF THE STATE, AS REQUIRED BY THE ACT OF CONGRESS APPROVED JANUARY 25, 1927 (44 STATS., 1026).

Attachment
Calendar Item 16 (2 pages)

CALENDAR ITEM

16.

REQUEST FOR ISSUANCE OF SUPPLEMENTAL PATENT, COVERING LOCATION 315, EL DORADO COUNTY, IN THE NAME OF MICHAEL KIMERER - S.W.O. 7932.

On October 4, 1870, Michael Kimerer applied to the State Surveyor General, predecessor of the State Lands Commission, to purchase the NW $\frac{1}{4}$, E $\frac{1}{2}$ OF SW $\frac{1}{4}$, and NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 16, T. 10 N., R. 12 E., M.D.M., containing 280 acres in El Dorado County. Following surrender of the fully paid Certificate of Purchase, State patent was issued by the Surveyor General to Michael Kimerer on February 28, 1877.

At the time of filing of the application as well as on the date of issuance of patent, the State had no title to the 280 acres for the reason that the United States plat of survey of the township, approved on May 2, 1870, clearly depicted all of said section as being mineral in character. Pursuant to the School Land Grant (Act of March 3, 1853, 10 Stat. 244), title to Sections 16 and 36 did not vest in the State upon survey if the sections were mineral in character. In 1905 the United States patented to a placer mining locator the 280 acres above-described except for 20 acres described as the N $\frac{1}{2}$ of the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of said Section 16.

By Act of Congress approved January 25, 1927, as amended (43 U.S.C.A. 870-873), the several grants to the states of numbered school sections were extended to embrace numbered-school-sections-mineral-in-character with certain exceptions. This grant was "upon the express condition that all sales, grants, deeds, or patents for any of the lands so granted shall hereafter be subject to and contain a reservation to the State of all... mineral in the lands so sold, granted, deeded, or patented", and that the mineral deposits in such lands "not heretofore disposed of by the State shall be subject to lease by the State as the State Legislature may direct", the proceeds of such leases to be utilized for the common or public schools. The Statute contains a further provision: "That any lands or minerals hereafter disposed of contrary to the provisions of this section shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General" of the United States.

On June 15, 1962, Mr. James R. Mansfield, Attorney at Law, submitted a request for a patent on behalf of his client, the present claimant, as successor in interest to the N $\frac{1}{2}$ of NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of said Section, for the purpose of perfecting title to the 20 acres involved. The facts show that the State had issued a patent on February 28, 1877, covering this 20 acres and other lands for which it is obvious that title did not pass from the United States to the State until the effective date of the Act of Congress approved January 25, 1927, which provided for the conveyance to the State of school lands mineral in character. The original State patent to Michael Kimerer for this and other land contained no reservation of minerals as required by the 1927 Act, thereby giving rise to the question as to the validity of the original patent, and as to whether or not a new patent could be issued as of current date reserving minerals in compliance with the 1927 Act.

CALENDAR ITEM 16. (CONTD.)

Accordingly, the matter was referred to the office of the Attorney General, which issued a letter opinion dated January 14, 1963, a copy of which is attached hereto as Exhibit "A". The opinion indicates that it would be proper to issue a supplemental State patent to the original applicant, Michael Kimerer, without further consideration, for the 20 acres described as the $N\frac{1}{2}$ of $NW\frac{1}{4}$ of $SW\frac{1}{4}$ of Section 16, T. 10 N., R. 12 E., M.D.M., El Dorado County, upon the filing of a formal application by the successor-in-interest to the original applicant, accompanied by suitable evidence as to the right of the applicant to receive a patent and the required statutory filing and patent fees. Any patent so issued would be required, pursuant to the provisions of the January 25, 1927, Act of Congress, to contain a reservation of all minerals in favor of the State. An appropriate application for the issuance of a supplemental patent, together with the required fees and the preliminary report of title, have been submitted by the present owner of the 20 acres involved.

IT IS RECOMMENDED THAT THE COMMISSION:

AUTHORIZE THE EXECUTIVE OFFICER TO PROCEED WITH ISSUANCE OF A SUPPLEMENTAL PATENT COVERING THE $N\frac{1}{2}$ OF $NW\frac{1}{4}$ OF $SW\frac{1}{4}$ OF SECTION 16, T. 10 N., R. 12 E., M.D.M., EL DORADO COUNTY, IN THE NAME OF THE ORIGINAL APPLICANT, MICHAEL KIMERER, SUBJECT TO A RESERVATION OF ALL MINERALS IN FAVOR OF THE STATE, AS REQUIRED BY THE ACT OF CONGRESS APPROVED JANUARY 25, 1927 (44 STATS., 1026).