

MINUTE ITEM

26. EXCHANGE APPLICATION NO. 65, DELBERT J. SARGENT, IMPERIAL COUNTY - S.W.O. 5729.

The Executive Officer presented a brief summary of the subject matter of Exchange Application No. 65, filed at the request of Mr. Delbert J. Sargent. The Executive Officer also read into the record a letter addressed to the State Lands Commission from Senator Aaron W. Quick of Imperial County, requesting it give favorable consideration to the testimony and application on behalf of Imperial County.

Presentations to the Commission were made by:

Mr. Delbert J. Sargent, Applicant
Mr. David E. Pierson, Director of Public Works, County of Imperial
Mr. Orlando B. Foote, County Counsel for Imperial County

The Executive Officer indicated that there was no set precedent for Commission action on this type of problem, and that it was a matter for policy determination.

The Commission took the matter under advisement with the request that both parties furnish the Commission with information about their minimum requirements, showing the actual situation on the ground on maps, and indicating what the conflicts involve, and what they represent in terms of loss of position to both the County and Mr. Sargent.

This matter is to be considered again at the meeting of the Commission scheduled to be held in Los Angeles on December 19, 1963.

Attachment
Calendar Item 1 (4 pages)

CALENDAR ITEM

1.

EXCHANGE APPLICATION NO. 65. DELBERT J. SARGENT, IMPERIAL COUNTY -S.W.O. 5729.

On January 5, 1954, Mr. Delbert J. Sargent filed an application with the Commission, pursuant to Sections 2400 to 2402, inclusive of Title 2, Division 3 of the California Administrative Code, to acquire 130.125 acres of Federal land in Imperial County. On January 28, 1954, the State filed an application for indemnity selection with the United States Bureau of Land Management for acquisition of the 130.125 acres, described as the $SE\frac{1}{4}$ of $NW\frac{1}{4}$, $SW\frac{1}{4}$ of $NW\frac{1}{4}$ of $NE\frac{1}{4}$, $SW\frac{1}{4}$ of $NE\frac{1}{4}$ and $NW\frac{1}{4}$ of $SE\frac{1}{4}$ of Section 2, T. 9 S., R. 12 E., S.B.M. The land is situated in the north-central portion of Imperial County, approximately eight miles easterly of Salton Sea, immediately southerly of and adjacent to the Riverside County line.

A Decision rendered by the Los Angeles office of the United States Bureau of Land Management under date of August 5, 1954, rejected the State's application for the reason that the land was situated within a reclamation withdrawal under the Act of June 7, 1902, and therefore was not subject to disposal. An appeal from this Decision under date of April 25, 1955, resulted in issuance of a further Decision by the Office of the Director of the United States Bureau of Land Management in Washington, D. C., upholding the Land Office rejection as to indemnity selection.

As a result of the aforementioned rejection, an exchange application to acquire the subject land under the provisions of Section 8 of the Taylor Grazing Act was filed by the State on June 10, 1955. During the early pendency of this exchange application, restoration of the land to entry from the reclamation withdrawal was in process and the lands were finally restored to entry on August 30, 1956.

For the past several years Delbert J. Sargent, the applicant, has had, under a special land-use permit from the United States, a commercial tropical-fish hatchery operation on a portion of the land involved, and during the course of this operation has constructed substantial improvements on the land. This operation is continuing at the present time, although it is the staff's understanding that the United States Bureau of Land Management has refused to renew the permit in view of an expression of interest in the subject land by the County of Imperial. Initially, it was the applicant's wish to acquire fee title to the land on which his operation existed and also to some surrounding lands, in order to protect his operation and to provide additional area for future expansion. On October 26, 1956, Mr. Sargent submitted an application for the purpose of adding to his original application an additional 90 acres, described as follows:

$SE\frac{1}{4}$ of $NE\frac{1}{4}$ of $NE\frac{1}{4}$, $SE\frac{1}{4}$ of $NE\frac{1}{4}$ and $NE\frac{1}{4}$ of $SE\frac{1}{4}$ of Section 2, T. 9 S., R. 12 E., S.B.M.

Accordingly, on October 31, 1956, the State submitted an amended exchange application to the Los Angeles office of the United States Bureau of Land

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Management to select a total of 220.125 acres, offering in exchange 280 acres of State land situated within the exterior boundaries of Death Valley National Monument, Inyo County, California. Since the filing of the amended application, no formal action has been taken by the United States Bureau of Land Management to indicate whether the State's application would be approved or disapproved.

On June 13, 1957, the State Lands Commission adopted a resolution authorizing the sale of the land to Delbert J. Sargent, the applicant, at the appraised fair market value, without competitive bidding, in the event the State was successful in acquiring title thereto. This action was taken in view of the fact that, up to that date, Mr. Sargent had erected improvements on the land with a value of about \$20,000, and, because of such improvements, it was considered reasonable and proper to sell at the appraised value, if the State acquired title, without requiring him to bid competitively. Furthermore, had the State been successful in acquiring the land under the original indemnity selection application, the applicant would not have been required to bid competitively under the rules and regulations governing this procedure, but would have been required to pay only the current fair market value.

On June 3, 1959, the County of Imperial filed an application directly with the United States Bureau of Land Management to acquire 70 acres of Federal land immediately adjoining the subject 220.125 acres on the north. This application has been approved by the United States, and a conveyance of the 70 acres has been made by the United States to the County of Imperial. Also, on June 3, 1959, the County, by separate application filed directly with the United States Bureau of Land Management, applied for the purchase of 570 acres of Federal land which includes the 220.125 acres embraced in the State exchange application filed for the benefit of Delbert Sargent. By resolution adopted by the Imperial County Board of Supervisors on April 1, 1963, a copy of which is attached hereto as Exhibit "A", the Board requested both the State Lands Commission and the United States Bureau of Land Management to withhold further action on the processing of the application of Delbert J. Sargent until such time as studies could be made to determine the effect Mr. Sargent's activities would have upon recreational developments proposed by Imperial County.

By letter dated May 17, 1963, the office of the State Director of the United States Bureau of Land Management in Sacramento advised the Division of the acquisition of the aforementioned 70 acres by the County of Imperial, and indicated the desire of the County to acquire an additional 570 acres, of which the 220.125 acres in the State exchange application is a part. The letter suggested that consideration be given by the State to the withdrawal of its exchange application, in order that the lands involved might be transferred to the County of Imperial.

On May 27, 1963, the Board of Supervisors of Imperial County adopted a resolution requesting the State Lands Commission to withdraw State Exchange Application No. 65 which had been filed with the United States Bureau of Land Management for the benefit of Delbert J. Sargent. A copy of said resolution is attached hereto as Exhibit "B". The resolution further

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indicated the willingness of the County to negotiate with Delbert J. Sargent for the purpose of arriving at a mutually satisfactory lease agreement whereof, should the County ultimately be successful in acquiring title to the lands, Mr. Sargent would be permitted to continue his operation of the tropical-fish hatchery on the area which is the subject of the exchange application. The resolution was not received by the Commission until July 8, 1963. On July 1, 1963, the Imperial County Board of Supervisors also adopted a resolution concerning the use of hot mineral waters, the major source of supply being from the 70 acres owned by the County, and indicating that ultimate development by the County, as proposed, may require all waters originating therefrom, which could adversely interfere with the operations of Mr. Sargent immediately to the south. A copy of this resolution is attached hereto as Exhibit "C".

Mr. David E. Pierson, Director of Public Works of Imperial County, has supplemented the resolution of the Board of Supervisors, adopted May 27, 1963 (Exhibit "B"), with a statement indicating the proposed development of the entire hot mineral spa area and the need for the County to acquire fee title to the additional 570 acres, including the 220.125 acres here in question. This supplemental statement is attached hereto as Exhibit "D". Also attached as Exhibits "E" and "F" are maps prepared by the County of Imperial, showing in detail the developments proposed by the County on both the 70 acres currently owned and the 570 acres applied for directly to the United States Bureau of Land Management.

A letter opinion of the office of the Attorney General dated July 29, 1963, a copy of which is attached heret. as Exhibit "G", concludes that the Commission has the authority to withdraw an application for the exchange of land under Section 8 of the Taylor Grazing Act prior to action being taken by the Bureau of Land Management if it deems such withdrawal to be in the public interest. The opinion further indicates that the State's applicant, Delbert J. Sargent, has no vested rights in the application which would preclude the Commission from denying or rejecting the application if, in its opinion, it is in the interest of the State so to do

In summation, the application of the County of Imperial cannot be acted upon favorably by the Bureau of Land Management because of the pendency of the conflicting State exchange application. At this point, therefore, it is necessary for the Commission to determine whether the application of Delbert Sargent, as well as the State's application filed with the Bureau of Land Management for his benefit, is to proceed or be denied, in order that the County of Imperial may be in a position to determine its plans for acquisition and development of the area involved.

The County has submitted substantial and adequate evidence of the extensive development proposed for the area subject to Exchange Application No. 65 and adjoining lands. The fact that public recreational facilities will result if the County of Imperial is in a position to proceed with its proposed development plans for the area and that these facilities, when developed, will be open to the general public, serving the recreational needs of a vast number of people, has been well established.

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IT IS RECOMMENDED THAT THE COMMISSION:

- (1) REJECT THE APPLICATION FILED BY DELBERT J. SARGENT ON JANUARY 22, 1954, AS AMENDED ON OCTOBER 26, 1956, COVERING THE SE $\frac{1}{4}$ OF NW $\frac{1}{4}$, SW $\frac{1}{4}$ OF NW $\frac{1}{4}$ OF NE $\frac{1}{4}$, SW $\frac{1}{4}$ OF NE $\frac{1}{4}$ AND NW $\frac{1}{4}$ OF SE $\frac{1}{4}$, SE $\frac{1}{4}$ OF NE $\frac{1}{4}$ OF NE $\frac{1}{4}$, SE $\frac{1}{4}$ OF NE $\frac{1}{4}$ AND NE $\frac{1}{4}$ OF SE $\frac{1}{4}$ OF SECTION 2, T. 9 S., R. 12 E., S.B.M., CONTAINING 220.125 ACRES IN IMPERIAL COUNTY;
- (2) DIRECT THE RETURN OF ALL DEPOSITS TO THE APPLICANT EXCEPT FOR FILING FEES; AND
- (3) DIRECT THE WITHDRAWAL OF EXCHANGE APPLICATION NO. 65, SERIAL NO. 0133945, LOS ANGELES LAND DISTRICT, FILED WITH THE UNITED STATES BUREAU OF LAND MANAGEMENT, TO SELECT SAID LANDS FOR THE BENEFIT OF DELBERT J. SARGENT.