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MINUTE ITEM

1/26/78
Lynch

36. PROPOSED ACCEPTANCE OF STIPULATION FOR JUDGMENT IN THE
MATTER OF UNITED STATES V. 21,120 ACRES IN SAN BERNARDINO
COUNTY, U. S. DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA -
W 4342.

During consideration of Calendar Item 36 attached, Mr. Robert C.
Hight requested that the Commission stipulate that the proposed
agreement will be substantially in the form as presented.

Upon motion duly made and carried, the resolution as presented
in Calendar Item 36 was approved by a vote of 3-0, with the
stipulation that the agreement will be substantially in the
same form as presented.

Attachment:
Calendar Item 36 (7 pages)

A 73
S 20

CALENDAR ITEM

36.

1/78
W 4342
Lynch

PROPOSED ACCEPTANCE OF STIPULATION FOR JUDGMENT
IN THE MATTER OF UNITED STATES V. 21,120 ACRES IN
SAN BERNARDINO COUNTY, U. S. DISTRICT COURT,
CENTRAL DISTRICT OF CALIFORNIA.

Condemnation action United States V. 21,120 Acres, More or Less, Situate in San Bernardino County was filed by the United States on lands lying within the U. S. Army Facility known as Fort Irwin. The subject action is the second action in respect to State-owned school land Sections 16 and 36, lying within this military reservation. The previous action, approved by the State Lands Commission on April 1, 1969, involved condemnation of a leasehold interest for a term of years beginning July 1, 1967, extendible for yearly periods thereafter at the election of the United States until June 30, 1972, with an annual rental consideration of \$25,000/year plus \$1,000/year, as the value of the option to renew.

The United States has used the subject lands since early World War II for army training. The lands have been heavily shelled and are undeduced. Accordingly, the staff of the Commission is of the opinion that the United States should acquire the fee interest in the lands since it is unlikely that this land will ever be returned to the State. Exchange possibilities with the United States have been in various stages of discussion since the 1960's. Recent exchange activities within the last year have been very positive with exchange possibilities probable within the next few years. It is staff's opinion that a land exchange involving the subject property is the only feasible solution to the continuing controversy over the consideration.

The current litigation is the result of differences of opinion over the economic rental, not the fee value of the subject property. Initial appraisal activity indicated that the economic rental of \$21,120, offered by the United States, was under market value that it was based on grazing leases and did not consider other leasing activities or the staff belief that 8% of the appraised land value represented the fair market rental of the subject property. Subsequent to staff rejection of the offer, staff of the Attorney General's Office became involved in the continuing negotiations. After substantial research, they recommended and State Lands Commission Staff concurred that we accept the

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CALENDAR ITEM NO. 36. (CONTD)

offer of \$21,120 based on the case of U. S. V. Shewfelt Investment Company. The judge in this case, Ninth Circuit Court of Appeals, dated November 16, 1977, rejected the land owner's theory of appraisal of property based on 8% of the market value of the fee property in that it was unequitable and that the land had no use except for the purpose of the taking and that 8% would be an unduly high award. Thus, the Attorney General has recommended that the Commission authorize the acceptance of the judgment and stipulation in the amount of \$100,320 for the rental period beginning July 1, 1972 and ending March 31, 1977.

Staff will continue negotiations for the exchange of the subject property as well as an equitable settlement for subsequent lease consideration until such an exchange is finalized.

IT IS RECOMMENDED THAT THE COMMISSION:

1. DETERMINE THAT AN EIR HAS NOT BEEN PREPARED FOR THIS ACTIVITY AS IT IS A NON-PROJECT UNDER THE PROVISIONS OF PRC 21065, 14 CAL. ADM. CODE 15037 AND 2 CAL. ADM. CODE 2903 (d).
2. AUTHORIZE THE ATTORNEY GENERAL AND/OR STATE LANDS COMMISSION'S STAFF ON BEHALF OF THE STATE, TO ENTER INTO AN APPROPRIATE JUDGMENT AND STIPULATION IN THE MATTER OF THE UNITED STATES V. 21,120 ACRES OF LAND, MORE OR LESS, SITUATE IN SAN BERNARDINO COUNTY, ET AL., U. S. DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA, CASE NO. 72-1403-JWC, CIVIL, PROVIDING FOR THE PAYMENT OF \$100,320, REPRESENTING RENTAL FOR THE PERIOD BEGINNING JULY 1, 1972, AND ENDING MARCH 31, 1977.
3. AUTHORIZE THE STAFF OF THE STATE LANDS COMMISSION TO CONTINUE EXCHANGE NEGOTIATIONS WITH THE FEDERAL GOVERNMENT.

Attachment: Exhibit "A"

1 ANDREA SHERIDAN ORDIN
 United States Attorney
 2 FREDERICK M. BROSHO, JR.
 Assistant U. S. Attorney
 Chief, Civil Division
 3 DONALD J. MERRIN
 Assistant U. S. Attorney
 4 1100 U. S. Courthouse
 312 North Spring Street
 5 Los Angeles, California 90012
 Telephone: (213) 633-2409
 6

7 Attorneys for Plaintiff.

8 UNITED STATES DISTRICT COURT
 9 GENERAL DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,

11 Plaintiff,

NO. 72-1403-JWC

CIVIL

12 v.

13 11,120 ACRES OF LAND, MORE OR
 14 LESS, SITUATE IN SAN BERNARDINO
 COUNTY, etc., et al.,
 Defendants.

JUDGMENT
 AND STIPULATION THEREFOR

15 JUDGMENT

16 Plaintiff, United States of America, by its attorneys of
 17 record, and the defendant(s) STATE OF CALIFORNIA

18 having stipulated and agreed that the following judgment may be
 19 entered, and the court being fully advised in the premises,

20 NOW, THEREFORE, IT IS ADJUDGED AND DECREED:

21 1. That, on June 21, 1972, plaintiff, United
 22 States of America. filed herein its Complaint in Condemnation,
 23 which included the real property therein and in these proceedings
 24 designated and described as Civil No. 72-1403-JWC

25 2. That, on June 21, 1972, plaintiff filed in this

1 action a Declaration of Taking, which included the aforesaid
2 property, and deposited in the registry of this court the sum of
3 \$ 15,640.00 as the estimated just compensation therefor; that
4 thereupon title to said property as described in said Declaration
5 of Taking became vested in the plaintiff, United States of America.
6 3. That the sum of \$ 21,120.00 ^{annually} /inclusive of interest,
7 is the fair, just and adequate compensation for the taking by
8 plaintiff of the estate and interest in said property as described
9 in paragraph 6 hereof, including any and all damages occurring by
10 reason thereof, if any.

11 *////*

12 *////*

13
14 4. That all taxes, assessments and other governmental
15 charges, and all other liens and claims of whatsoever nature
16 existing against said property, are transferred therefrom to the
17 above-mentioned funds deposited in the registry of the court,
18 to the end that the United States of America may have an unincum-
19 bered estate, right, title and interest in said property as
20 described in said Declaration of Taking.

21 5. That said compensation shall be paid and disbursed
22 as follows:

23 10: STATE OF CALIFORNIA \$109,320.00,
24 representing annual rental for the period
25 beginning July 1, 1972, and ending March 31, 1977.

26 6. That the property and the estate therein affected by
27 this judgment are described as Civil No. 72-1403-JWC in
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1 plaintiff's Complaint in Condemnation, and its Declaration of
2 Taking, on file herein.

3 7. That plaintiff had, and has, the right to condemn the
4 property, estates and interests described in its Complaint in
5 Condemnation and in its Declaration of Taking, on file herein,
6 for the public uses described and set forth therein.

7 The court retains jurisdiction to make and enter such
8 further orders and judgments as may be necessary and proper in
9 the premises.

10 DATED: This _____ day of _____, 1957.

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UNITED STATES DISTRICT JUDGE

STIPULATION FOR JUDGMENT

COME NOW the plaintiff, United States of America, by its
attorneys of record, and the defendant(s) STATE OF CALIFORNIA

whic' said defendant:

1. Hereby voluntarily appear(-) in this action;
2. Represent(s) to plaintiff and to the court:

(a) That he is the former owner of the real property
described in the Complaint in Condemnation and in the Declaration
of Taking herein as Civil No. 72-1403-JWC;

(b) That he has no right, title, claim or interest in
or to any other property involved in this proceeding and has made
no assignment of any interest in said property or in or to the

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compensation to be paid therefor except as provided in the judgment to be entered hereon; and

(c) That all claims and demands of whatsoever name or nature which existed against said property at the time of the taking thereof, or might be made upon or against said fund or the plaintiff, for or on account of any right, title, interest, lien, tax assessment, right-of-way, easement, or claim of any other nature against said property existing prior to or at the time of the taking thereof, are subject and subordinate to the former ownership of defendant in and to said property;

3. Agrees to hold the plaintiff free and harmless therefrom;

4. Expressly waives service of process, notice of setting for trial, right of trial or other hearing on all issues, finding of fact, conclusion of law, and notice of judgment; and

Plaintiff, United States of America, and said defendant mutually STIPULATE AND AGREE that the court may make and enter the foregoing judgment, without further notice, in final determination of this action as to Civil No. 72-1403-JWC;

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Whenever the context of this stipulation requires, the singular number as used herein shall be read as plural, and the masculine gender as feminine or neuter.

DATED: This _____ day of _____, 1977.

ANDREA SPURDAN O'NEIL
United States Attorney
FREDERICK H. WOODS, JR.
Assistant U. S. Attorney
Chief, Civil Division

By _____
DORIS J. TARKENTON
Assistant U. S. Attorney
Attorneys for Plaintiff.

DATED: This _____ day of _____, 1977.

EVERETT J. YOUNG
Attorney General
N. CLAYTON TAYLOR
Assistant Attorney General

By _____
WILLIAM A. GILSON
Assistant Attorney General
Attorneys for Defendant.