

# The Burger Court Opinion Writing Database

## *Andrus v. Idaho*

445 U.S. 715 (1980)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

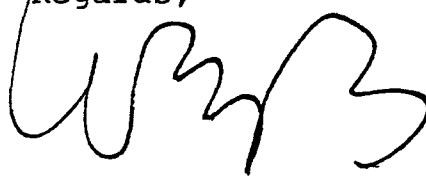
April 10, 1980

RE: 79-260 - Andrus v. Idaho

Dear Byron:

This will confirm my earlier word to you that I  
join you.

Regards,

A handwritten signature in dark ink, appearing to be 'WRB', written over the typed word 'Regards,'.

Mr. Justice White

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

March 24, 1980

RE: No. 79-260 Andrus v. State of Idaho, et al.

Dear Byron:

I agree with your memorandum.

Sincerely,

*Bill*

Mr. Justice White

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

April 1, 1980

RE: No. 79-260 Andrus v. State of Idaho, et al.

Dear Byron:

I agree.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill".

Mr. Justice White

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

March 21, 1980

Re: No. 79-260, Andrus v. Idaho

Dear Byron,

I am in basic agreement with your  
Memorandum.

Sincerely yours,

PS,  
/

Mr. Justice White

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

April 1, 1980

Re: No. 79-260, Andrus v. Idaho

Dear Byron,

I am glad to join your opinion  
for the Court.

Sincerely yours,

P.S.  
✓

Mr. Justice White

Copies to the Conference

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
✓ Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice White

Circulated: 20 MAR 1980

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## SUPREME COURT OF THE UNITED STATES

No. 79-260

Cecil D. Andrus, Secretary of Interior, Petitioner, v. State of Idaho et al.	} On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.
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[March —, 1980]

Memorandum of MR. JUSTICE WHITE.

The Carey Act of 1894, ch. 301, § 4, 28 Stat. 422, 43 U. S. C. § 641 (Act), "to aid public-land States" in the reclamation of desert lands, authorizes the Secretary of the Interior (Secretary) upon proper application "to contract and agree, from time to time . . . binding the United States to donate, grant, and patent" such desert lands, not exceeding a specified acreage, as the State should cause to be irrigated, reclaimed, and occupied, provided, however, that the lands would be restored to the public domain if reclamation had not begun and plans carried out within stated time limits. Originally, each State covered by the Act was limited to 1 million acres; but in 1908, the ceiling for Idaho was raised to 3 million acres. Also, in 1910, upon request of a State, the Secretary was authorized to withdraw desert lands temporarily from the public domain prior to the State's submission of a formal plan under the Carey Act. 36 Stat. 237, 43 U. S. C. § 643.<sup>1</sup>

<sup>1</sup> This legislation was prompted by a desire to prevent speculative filings under entry statutes on land chosen by a State for a Carey Act project. S. Rep. No. 367, 61st Cong., 2d Sess. (1910); H. R. Rep. No. 662, 61st Cong., 2d Sess. (1910). After the decision and judgment of the District Court in this case, this provision was repealed by § 704 (a) of the Federal Land Policy and Management Act of 1976 (FLPMA), Pub. L. No. 94-579, 90 Stat. 2792. Under § 204 of FLPMA, 43 U. S. C. § 1714, however,

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

STYLISTIC CHANGES THROUGHOUT.  
SEE PAGES:

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27 MAR 1980

27 MAR 1980

P. 15  
2d  
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## SUPREME COURT OF THE UNITED STATES

No. 79-260

Cecil D. Andrus, Secretary of Interior, Petitioner, v. State of Idaho et al.	} On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.
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[March —, 1980]

### Memorandum of MR. JUSTICE WHITE.

The Carey Act of 1894, ch. 301, § 4, 28 Stat. 422, 43 U. S. C. § 641 (Act), "to aid public-land States" in the reclamation of desert lands, authorizes the Secretary of the Interior (Secretary) upon proper application "to contract and agree, from time to time . . . binding the United States to donate, grant, and patent" such desert lands, not exceeding a specified acreage, as the State should cause to be irrigated, reclaimed, and occupied, provided, however, that the lands would be restored to the public domain if reclamation had not begun and plans carried out within stated time limits. Originally, each State covered by the Act was limited to 1 million acres; but in 1908, the ceiling for Idaho was raised to 3 million acres. Also, in 1910, upon request of a State, the Secretary was authorized to withdraw desert lands temporarily from the public domain prior to the State's submission of a formal plan under the Carey Act. 36 Stat. 237, 43 U. S. C. § 643.<sup>1</sup>

<sup>1</sup> This legislation was prompted by a desire to prevent speculative filings under entry statutes on land chosen by a State for a Carey Act project. S. Rep. No. 367, 61st Cong., 2d Sess. (1910); H. R. Rep. No. 662, 61st Cong., 2d Sess. (1910). After the decision and judgment of the District Court in this case, this provision was repealed by § 704 (a) of the Federal Land Policy and Management Act of 1976 (FLPMA), Pub. L. No. 94-379, 90 Stat. 2792. Under § 204 of FLPMA, 43 U. S. C. § 1714, however,



To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
✓ Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice White

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- 1 APR 1980  
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- MINOR CHANGES THROUGHOUT

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 79-260

Cecil D. Andrus, Secretary  
of Interior, Petitioner,  
v.  
State of Idaho et al. } On Writ of Certiorari to the  
United States Court of Appeals  
for the Ninth Circuit.

[March —, 1980]

MR. JUSTICE WHITE delivered the opinion of the Court. |

The Carey Act of 1894, ch. 301, § 4, 28 Stat. 422, 43 U. S. C. § 641 (Act), "to aid public-land States" in the reclamation of desert lands, authorizes the Secretary of the Interior (Secretary) upon proper application "to contract and agree, from time to time . . . binding the United States to donate, grant, and patent" such desert lands, not exceeding a specified acreage, as the State should cause to be irrigated, reclaimed, and occupied, provided, however, that the lands would be restored to the public domain if reclamation had not begun and plans carried out within stated time limits. Originally, each State covered by the Act was limited to 1 million acres; but in 1908, the ceiling for Idaho was raised to 3 million acres. Also, in 1910, upon request of a State, the Secretary was authorized to withdraw desert lands temporarily from the public domain prior to the State's submission of a formal plan under the Carey Act. 36 Stat. 237, 43 U. S. C. § 643.<sup>1</sup>

<sup>1</sup> This legislation was prompted by a desire to prevent speculative filings under entry statutes on land chosen by a State for a Carey Act project. S. Rep. No. 367, 61st Cong., 2d Sess. (1910); H. R. Rep. No. 662, 61st Cong., 2d Sess. (1910). After the decision and judgment of the District Court in this case, this provision was repealed by § 704 (a) of the Federal Land Policy and Management Act of 1976 (FLPMA), Pub. L. No. 94-579, 90 Stat. 2792. Under § 204 of FLPMA, 43 U. S. C. § 1714, however,

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

March 25, 1980

Re: No. 79-260 - Andrus v. State of Idaho, et al.

Dear Byron:

I am in agreement with your memorandum.

Sincerely,

*J.M.*

T.M.

Mr. Justice White

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL


April 1, 1980

Re: No. 79-260 - Andrus v. State of Idaho

Dear Byron:

Please join me.

Sincerely,



T.M.

Mr. Justice White

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

March 31, 1980

Re: No. 79-260 - Andrus v. Idaho

Dear Byron:

I, too, am in basic agreement with your memorandum and would join an opinion along its lines.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harry", with a horizontal line underneath.

Mr. Justice White

cc: The Conference

✓  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

April 1, 1980

Re: No. 79-260 - Andrus, Secretary v. Idaho

Dear Byron:

Please join me.

Sincerely,

*HAB.*  
—

Mr. Justice White

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

March 22, 1980

79-260 Andrus v. Idaho

Dear Byron:

When your memorandum is converted into an opinion,  
I'll be happy to join you.

Sincerely,

*Lewis*

Mr. Justice White

lfp/ss

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

April 1, 1980

79-260 Andrus v. Idaho

Dear Byron:

This will confirm my previous indication that I  
would join you.

Sincerely,

*Lewis*

Mr. Justice White

lfp/ss

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

March 24, 1980

Re: No. 79-260 Andrus v. Idaho

Dear Byron:

I am in substantial agreement with your Memorandum of March 20, 1980, but I do not think it is necessary in this case to decide the standard for reviewing the Secretary's reasons for approving or disapproving a state's contract application. Can I prevail on you to delete the following phrase, which immediately precedes footnote 12 in the text:

" . . . if he has a rational, nonarbitrary reason for rejecting it."

Sincerely,



Mr. Justice White

Copies to the Conference



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

March 31, 1980

Re: No. 79-260 - Andrus v. State of Idaho

Dear Byron:

Please join me in your memorandum opinion of March 27th. I, too, would join an opinion along its lines.

Sincerely,



Mr. Justice White

Copies to the Conference

✓  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

April 7, 1980

Re: No. 79-260 - Andrus v. State of Idaho

Dear Byron:

Please join me.

Sincerely,



Mr. Justice White

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

March 24, 1980

Re: 79-260 - Andrus v. Idaho

Dear Byron:

Idaho's complaint arising out of the denial of its Carey Act application for specific acreage that had been previously withdrawn for stock-driveway purposes fairly raised the question whether Idaho has a present entitlement to 3,000,000 acres of its choosing. The District Court correctly rejected that claim. Idaho does not seek review of that ruling here.

The question whether the Secretary must reserve a total of 3,000,000 acres for future selection by Idaho is another matter. Unless and until there is some reason to believe that the Secretary will, or may, divert enough land to other purposes to leave less than 3,000,000 available for Carey Act entry in Idaho, I fail to see how there could be any ripe case or controversy with respect to that question. There remains, as I understand it, some seven or eight million acres of desert lands in Idaho that are appropriate for Carey Act claims. Based on past history, it may be another 50 or 60 years before there is any need to resolve this issue.

Nor do I believe that the complaint encompassed any question concerning the Secretary's power, arbitrarily or otherwise, to deny a petition by Idaho for reclassification of lands that had been withdrawn for other purposes. Idaho has not as yet sought reclassification, since as the District Court pointed out, all that it has done so far is to request temporary withdrawal of certain lands from the public domain prior to any request for reclassification. Its complaint prayed simply for a declaration that the Secretary of

the Interior "has no authority or discretion to deny any request for segregation or withdrawal when presented by the Plaintiff." Under these circumstances, so much of the District Court's opinion that addressed Idaho's rights when seeking to reclassify public lands was dictum, and so much of the District Court's order that purported to affect such possible future proceedings, by declaring that Idaho was ultimately entitled to some 3,000,000 acres (though not entirely of Idaho's own choosing), is addressed to an issue that there is no reason to decide now because it is plainly not ripe.

In short, I would simply vacate those parts of the District Court's judgment purporting to resolve the question presented by the Government in its petition for certiorari.

Respectfully,



Mr. Justice White

Copies to the Conference .

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

From: Mr. Justice Stevens

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## SUPREME COURT OF THE UNITED STATES

No. 79-260

Cecil D. Andrus, Secretary of Interior, Petitioner, v. State of Idaho et al.	} On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.
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[April —, 1980]

MR. JUSTICE STEVENS, dissenting.

Everyone agrees that the District Court correctly rejected Idaho's now-abandoned claim that the Carey Act, as amended, constituted an absolute, present grant of entitlement to any three million acres of arid lands that the State might designate at some time in the future. But the District Court's rejection of that claim did not require it to express any opinion on any of the questions that the Court discusses today.

This record does not present the question of what reasons, if any, are necessary or sufficient to justify a denial by the Secretary of a Carey Act application or a petition for reclassification under the Taylor Grazing Act.<sup>1</sup> I would therefore express no opinion on that question.

Nor is there anything in this record to suggest that there is any imminent likelihood that the Secretary will reserve for other purposes so much of the federal land in Idaho otherwise suitable for Carey Act contracts that less than 2,400,000 acres will be available.<sup>2</sup> Unless and until such a likelihood

<sup>1</sup> Idaho's complaint prayed simply for a declaration that "the State of Idaho has an absolute right to demand up to three million acres of desert lands under the Carey Act and further . . . that the [Secretary of Interior] . . . has no authority or discretion to deny any request for segregation or withdrawal when presented by the Plaintiff." App. 6.

<sup>2</sup> It was suggested by the State at oral argument that perhaps as much as 8,500,000 acres is "susceptible of possible irrigation that is still in Federal hands." Tr. of Oral Arg. 33. To date, Idaho has received approximately 600,000 acres under the Carey Act.