

WILLIAM J. COLMAN

IBLA 70-145

Decided October 8, 1971

Act of June 3, 1966--Applications and Entries: Generally--Rights-of-Way: Generally--Surveys of Public Lands: Generally

Reservoir right-of-way applications are properly rejected where the lands applied for are within public land surveyed meander lines of the Great Salt Lake and have been conveyed to the State of Utah by the United States in accordance with the Act of June 3, 1966, and they will not be suspended to await possible reversion of the land to the United States if certain contingencies prescribed by the act should transpire.

IBLA 70-145 : U-0147783
: 0148201
WILLIAM J. COLMAN : 8308

: Right-of-way applications
: rejected

: Affirmed

DECISION

William J. Colman has appealed to the Secretary of the Interior from a decision dated April 16, 1970, by the Office of Appeals and Hearings, Bureau of Land Management, which affirmed a Utah land office decision of February 6, 1970, rejecting Colman's three applications for reservoir rights-of-way in Box Elder County, Utah. The land office rejected the applications on the ground that the United States had quitclaimed to the State of Utah all right, title and interest in the lands, including the brines and minerals in solution, pursuant to the Act of June 3, 1966, 80 Stat. 192, and that the State of Utah had assumed the obligation to administer the subject lands in the manner of a trustee in accordance with the provisions of that act.

The three applications were filed under the Act of February 15, 1901, 43 U.S.C. § 959 (1964). Application U-0147783 was filed November 12, 1965, for 118,023.8 acres of unsurveyed lands described by metes and bounds. Application U-0148201 was filed December 22, 1965, for 5,073.01 acres of unsurveyed lands. Application U-8308 was filed April 22, 1969, for 20,124 acres described as all of the relicted lands in certain designated sections, townships and ranges. The stated purpose for the reservoirs was extracting minerals from the brines of Great Salt Lake.

Appellant contends that the applications should be allowed or should be held in suspension pending resolution of a controversy as to whether the lands belong to the United States or to the State of Utah. He contends that the lands are above the 4,200 foot elevation and, therefore, are above any meander of the high water mark of the Great Salt Lake. Accordingly, he contends, the lands are not within the purview of the 1966 act, but are available for disposition by the United States pursuant to the Act of February 15, 1901. Appellant also requests a hearing be ordered for the purpose of allowing him to demonstrate the reasons in support of his position.

A brief review of the controversy between the United States and the State of Utah is helpful to understand the import of the Act of June 3, 1966, and the subsequent litigation authorized by the act.

In 1959 the Bureau of Land Management advised the Utah State Land Board that it intended to complete the survey of federal lands bordering the Great Salt Lake along a contour representing the height of the lake on January 4, 1896, the date Utah achieved its statehood.

A protest from the Utah State Land Board against using the height of the lake at that date rather than an earlier date when the lake was at a higher level was dismissed by the Bureau's Area Administrator. The State Land Board appealed this decision, contending the Bureau was unlawfully attempting to limit Utah's ownership of Great Salt Lake lands to the low water mark as of the date of statehood.

The Area Administrator's decision was affirmed with modifications by a decision of the Director, Bureau of Land Management, dated May 31, 1961 (reported at 70 I.D. 31), which was affirmed by the Department, State of Utah, 70 I.D. 27 (1963). These decisions assumed for the purpose of deciding the issues raised in the appeals of the State Land Board that the Great Salt Lake was a navigable body of water (70 I.D. 33).

The question of the navigability of the lake has importance because the State's claim to the accreted or relicted lands to be surveyed rested upon its ownership of the bed of the lake as a navigable body of water. States admitted to the union by virtue of their sovereignty at the time of statehood and their admission on equal terms with the other states acquire title to the beds of navigable bodies of water within their boundaries. Martin v. Waddell, 41 U.S. (16 Pet.) 367 (1842); Pollard's Lessee v. Hagan, 44 U.S. (3 How.) 212 (1845); Barney v. Keokuk, 94 U.S. 324 (1876). Therefore, although the United States owned the public lands within the State of Utah by its acquisition of the territory from Mexico, upon attaining statehood, Utah acquired title to such lands underlying navigable bodies of water. If the lake were not navigable at statehood, title to the bed would have remained in the United States unless or until conveyed by the Federal Government. Id.

The primary question considered by the Department and the Bureau, based on the assumption of the navigability of the lake, was whether the State by virtue of ownership of the bed of the lake retained ownership of lands uncovered upon recession of the waters of the lake, or could restrict or limit the riparian rights of

owners of the uplands, particularly the Federal Government, to rights to such lands obtained under the common law principles of accretion or reliction. After extensive discussion, these decisions concluded that the common law principles of accretion and reliction applied, that the State's ownership of the bed of the lake could not defeat the right of an upland owner to such accretions and relictions, that the waterline was the boundary line, and as that line fluctuated the ownership of the land followed the line. Consequently, the decisions held that any accretions or relictions attached to federal uplands to the lake, and the United States could survey such accreted or relicted lands as public lands, establishing the meander along the water's edge as of the date of the survey.

The departmental action led to the Act of June 3, 1966, which governs our disposition of Colman's appeal here. The act authorized the Secretary of Interior to complete the public land survey around the Great Salt Lake. Lands lying lakeward of any surveyed meander line, exclusive of the Bear River Migratory Bird Refuge and the Weber Basin Federal reclamation project, would be conveyed by the United States to the State of Utah, with certain mineral reservations, while uplands from any meander line would be conveyed by the State to the United States. The act also gave the State the option of (1) bringing suit against the United States for the purpose of deciding ownership of the land prior to the conveyances, in order to determine whether compensation must be paid by the State to the United States for the lands conveyed to the State, or (2) paying fair market value for the lands as determined by the Secretary of Interior as of the date of the completed survey without litigating the ownership question.

The State of Utah elected to bring suit. During this litigation the Department of Justice raised the issue of the navigability of Great Salt Lake, which issue had been assumed but not determined by this Department in considering the State's appeals. On June 7, 1971, the Supreme Court in Utah v. United States, 403 U.S. 9, upheld the finding of a Special Master appointed by that Court that the Great Salt Lake was navigable at the time of statehood. This resolved the question of the State's ownership of lands underlying the waters of the Great Salt Lake. However, the Court expressly stated that the claim of Utah would override any claim of the United States, "with the possible exception of a claim based on the doctrine of reliction not now before us." 403 U.S. 10. The decision invited the parties to address themselves to a proposed decree of the Special Master "with the view of agreeing, if possible, upon the issues which

have now been settled by this litigation." 403 U.S. 13. It is clear, therefore, that the Supreme Court did not rule upon the issue of the ownership of accreted or relicted lands which issue the departmental decision had considered. 1/

Under the Act of June 3, 1966, the question of the ownership of the accreted or relicted lands relates to ownership prior to the issuance of the quitclaim deed by the United States. This issue is primarily significant in determining whether the State must compensate the United States for such lands. This remains for resolution by agreement of the parties or further litigation.

We come now to the question of the effect of the Act of June 3, 1966, upon Colman's application. By section 2 of the Act of June 3, 1966, the Secretary of the Interior was instructed to convey to the State of Utah by quitclaim deed

. . . all right, title, and interest of the United States in lands including brines and minerals in solutions in the brines or precipitated or extracted therefrom, lying below the meander line of the Great Salt Lake in such State, as duly surveyed heretofore or in accordance with section 1 of this Act, whether such lands now are or in the future may become uncovered by the recession of the waters of said lake . . . (80 Stat. 192).

Therefore, in accordance with this act, if the lands had been or would be meandered by a United States public land survey, regardless of whether the lands are now or have been covered by water, lands within the meander lines then or thereafter established would be conveyed to the State.

1/ Paragraph 1(a) of the proposed decree of the Special Master (set forth as an Appendix to the Supreme Court's decision) would enjoin the United States from asserting any claim of right, title and interest:

". . . to the bed of the Great Salt Lake lying below the meander line of Great Salt Lake as duly surveyed heretofore or in accordance with Section 1 of the Act of June 3, 1966, 80 Stat. 192, with the exception of any lands within the Bear River Migratory Bird Refuge and the Weber Basin federal reclamation project." 403 U.S. 13.

Paragraph 2 of the Proposed Decree provides that the State would not be required to pay the United States for such lands lying below the meander line of the Great Salt Lake, as delineated in 1(a). 403 U.S. 14.

Appellant does not dispute the fact that lands within such meander lines have been conveyed to the State, but only whether these lands are within such meander lines. However, his own charts tend to show that the lands are within such surveyed meander lines. The Chief, Division of Cadastral Survey, Bureau of Land Management, has reported that the lands applied for in these applications are located below "the meander line" as used in the Act of June 3, 1966.

In making his request for a hearing, appellant has made no offer of proof to show that these lands are not within surveyed meander lines. He alleges only that the lands are above the 4,200 foot elevation and, therefore, could not be within any meander of a high water mark. This hypothesis is not a basis for granting a hearing where the survey plats show the meander lines and it is apparent that the lands applied for are within such lines. With the identification of the meander lines, the question of elevation of the land is irrelevant to determine the extent of the conveyance which has been made under the Act of June 3, 1966. 2/ Therefore, his request for a hearing is denied.

Because the lands applied for have been conveyed to the State of Utah in accordance with the Act of June 3, 1966, the applications for the rights-of-way were properly rejected for that reason. The only question remaining is whether appellant's request should be granted to have the applications suspended pending final resolution of all the issues between the State of Utah and the United States.

Since the State of Utah took certain action as required by the Act of June 3, 1966, the possibility of the United States regaining title to the land which it has quitclaimed to the State rests upon two contingencies set forth in section 5(b) of the act. First, there would have to be a determination that the lands were property of the United States prior to the conveyance. As indicated above, the decision of the Supreme Court has resolved this question insofar as lands covered by the waters of the Great

2/ This is not to suggest that the elevation may not be a factor for the State and Federal Government to consider in trying to resolve the questions remaining in their controversy, but only that it is not a factor with respect to the status of the lands at this time in connection with Colman's applications.

Salt Lake. The Court did not resolve the question as to relicted lands. Even if the relicted lands were determined to be property of the United States prior to the conveyance, the second contingency arises. The State of Utah by paying the fair market value of such lands within the time required by the act would satisfy the conditions of the act. However, if it failed to do so, then section 5(b) states that the "conveyance authorized by section 2 . . . shall be null and void."

By section 6 of the Act of June 3, 1966, the State of Utah was authorized to administer in the manner of a trustee the lands conveyed to it. That section prescribes that in the event the conveyance authorized by section 2 became null and void, then any valid permits, licenses, and leases issued by the State under authority of this section,

. . . shall be deemed permits, licenses and leases of the United States and shall be administered by the Secretary of Interior in accordance with the terms and provisions thereof. (80 Stat. 194).

There is, therefore, under the terms of the Act of June 3, 1966, authority whereby the land may be utilized and administered by the State with the possible reversionary interest in the United States protected and recognized.

There is no justifiable reason for suspending action on these applications to await the possibilities that the land might revert to the United States. This Department has long required the rejection of applications where land is withdrawn or otherwise unavailable under the public land laws, rather than hold such applications in suspense awaiting future availability of the land. 43 CFR 2091.1 (1971); Roy Leonard Wilbur et al., 61 I.D. 157 (1953); Hunt v. State of Utah, 59 I.D. 44, 46 (1945). There is no basis for exempting these applications from the operation of this rule. This conclusion renders moot any further questions which might be raised concerning appellant's applications.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5;

35 F. R. 12081), the decision appealed from is affirmed for the reasons herein stated.

Joan B. Thompson, Member

We concur:

Newton Frishberg, Chairman

Frederick Fishman, Member

