

ERNEST SMITH
RUTH SMITH

IBLA 72-48

Decided December 27, 1989

Mining Claims: Generally -- Mining Claims: Lands Subject to

Absent a statutory direction to the contrary, lands acquired by purchase do not thereby acquire a public land status and are therefore not subject to the operation of the United States mining laws.

The Act of August 10, 1939, 53 Stat. 1347, adding certain lands to the Kaniksu National Forest, constitutes such a statutory direction.

Statutory Construction: Generally -- Statutory Construction: Administrative Construction

It is an elementary rule of statutory construction that effect must be given, if possible, to every word, clause and sentence of a statute.

Where contemporaneous and practical interpretation of a statute has stood unchallenged for some 26 years, it will be regarded as of great importance in arriving at the proper construction of a statute.

Where a statute recites that "[l]ands . . . purchased under . . . this Act shall be open to mineral locations . . .", the statute contains no purchase authority, but another section of the statute refers to laws under which such purchases have been made, the phrase quoted will be construed as meaning "[l]ands . . . purchased under . . . the laws set forth in this Act. . . ."

Administrative Practice -- Administrative Procedure Act: Hearings -- Mining Claims: Lands Subject To -- Rules of Practice: Hearings

Mining claims located on lands purchased by the United States under the Act of April 8, 1935, 49 Stat. 115, and added to the Kaniksu National Forest by the Act of August 10, 1939, 53 Stat. 1347, may not be declared null and void ab initio, but the mining claimants must be afforded notice and an opportunity for hearing before the claims are subject to cancellation.

IBLA 72-48 : OR 6177 (Washington)
ERNEST SMITH : Mining claims declared
RUTH SMITH : null and void ab initio
: Vacated and remanded

DECISION

Ernest Smith and Ruth Smith have appealed to the Board of Land Appeals from a decision dated July 7, 1971, in which the Oregon state office, Bureau of Land Management, declared the Holt No. 1 and Holt No. 2 placer mining claims null and void ab initio, and rejected application OR 6177 (Washington) for mineral patent. The decision stated that the subject lands had been patented to the Northern Pacific Railway on September 4, 1902, were subsequently reacquired by the United States through purchase by the Farm Security Administration on May 2, 1936, under the provisions of the Act of April 8, 1935, 49 Stat. 115, and were added to the Kaniksu National Forest by the Act of August 10, 1939, 53 Stat. 1347. The decision held that reacquisition of the lands by the United States did not, per se, make them open to mining location; it required some specific statutory direction which was not given by the Kaniksu Act, or by any other statute.

The appellants contend that the wording of section 2 of the Kaniksu Act does not support the interpretation given by the state office decision.

In his report on H.R. 2752, 76 Cong., 1st Sess. (1939), (which culminated in the Act of August 10, 1939), the Secretary of Agriculture indicated the bill proposed to give "a national forest status to all lands of the United States" and to extend the provisions of the Forest Exchange Act of March 20, 1922, 16 U.S.C. § 485 (1970), to all other lands within a described area of approximately 459,400 acres lying between the Colville and the Pend Oreille Valleys in the northeastern part of the State of Washington. The Secretary stated that "addition of the lands to the national forest will in no way interfere with legitimate mining activities." Id. 7 p. 2. He recommended that the bill be given favorable consideration so that national forest status can be given to the described lands.

Absent a statutory direction to the contrary, lands acquired by purchase and made a part of a national forest do not thereby acquire a public domain status. See Rawson v. United States, 225 F.2d 855 (9th Cir. 1955), cert. denied, 350 U.S. 934 (1955), 40 Op. Atty Gen. 389 (1945). It is clear, therefore, that unless the 1939 Act contains such a direction, the lands in issue would not be subject to mining location under the United States mining laws. Thompson v. United States, 308 F.2d 628, 631 (9th Cir. 1962); Bobby Lee Moore et al., 72 I.D. 505, 508-510 (1965).

The 1939 Act provides in applicable portion as follows:

[Sec. 1] That all lands of the United States situated within the area hereinafter described, including those acquired, or in course of acquisition, under the provisions of the National Industrial Recovery Act, approved June 16, 1933 (48 Stat. 195), the Emergency Relief Appropriation Act, approved April 8, 1935 (49 Stat. 115), or the Bankhead-Jones Farm Tenant Act, approved July 22, 1937 (50 Stat. 522), are hereby added to and made parts of the Kaniksu National Forest, Washington, and shall hereafter be subject to the rules and regulations applicable to national-forest lands, but claims, entries, filings, or appropriations under the public-lands laws, or special provisions included in conveyances of title to the United States, valid and subsisting at the date of this Act and thereafter legally maintained, shall not be affected by this Act.

* * * * *

Sec. 2. Any of the lands described in the first section of this Act which are privately owned may be accepted in exchange by the Secretary of the Interior under the provisions of the Act entitled, 'An Act to consolidate national-forest lands', approved March 20, 1922, as amended (U.S.C., title 16, secs. 485, 486). All of such lands so accepted in exchange shall thereupon be added to and made a part of the Kaniksu National Forest in the State of Washington and shall thereafter be administered under the laws and regulations relating to the national forests. Lands received in exchange or purchased under the provisions of this Act shall be open to mineral locations, mineral development, and patent, in accordance with the mining laws of the United States.

The fact that sec. 1 of the 1939 Act provides that these acquired lands "are hereby added to and made parts of the Kaniksu National Forest . . . and shall hereafter be subject to the rules and regulations applicable to national-forest lands . . ." distinguishes these acquired lands from those acquired under the Weeks Act, as amended, 16 U.S.C. §§ 480, 500, 513-519, and 521 (1970). Sec. 10 of the Weeks Act, 16 U.S.C. § 519 (1970), after providing for sale of certain agricultural lands at their true value, further states:

And no right, title, interest, or claim in or to any lands acquired . . . or the products, resources, or use thereof after such lands shall have been so acquired, shall be initiated or perfected, except as in this section provided.

Sec. 11 of the Weeks Act, 16 U.S.C. § 521 (1970), directs that the land acquired under its authority "be permanently reserved, held, and administered as national-forest lands" under the Act of March 3, 1891, as amended, 16 U.S.C. 471 (1970). Cf. 40 Op. Atty Gen. 389 (1945).

Turning to sec. 2 of the 1939 Act, we note a dichotomy -- the lands in sec. 1 are made subject to the "rules and regulations applicable to national-forest lands," in contradistinction to lands acquired in exchange under the Forest Exchange Act of March 20, 1922, as amended, 16 U.S.C. §§ 485, 486 (1970), which are to "be administered under the laws and regulations relating to the national forests." [Emphasis supplied.]

However, sec. 2 of the 1939 Act further provides that

Lands received in exchange or purchased under the provisions of this Act shall be open to mineral locations. . . . [Emphasis supplied.]

But the 1939 Act makes no provision for purchase of lands. What meaning is therefore to be given to the word "purchased"?

"It is an elementary rule of construction that effect must be given, if possible, to every word, clause and sentence of a statute." 1 KENT COMM. 462 (13th ed. 1884). This rule is particularly appropriate where, as here, the language in question was added to the bill by the Senate Committee on Public Lands and Surveys. S. Rept. 959, 76th Cong., 1st Sess. (1939). Although the matter is not entirely free from doubt, it would appear logical to read "Lands . . . purchased under the provisions of this Act" as meaning "Lands . . . purchased under the provisions of the laws set forth in this Act." We believe this conclusion comports with the concept of "whole statute" interpretation. SUTHERLAND, STATUTORY CONSTRUCTION, § 4703 (3d ed. 1943).

We do not regard the provision of sec. 1, saving valid and subsisting public land claims, entries, filings, or appropriations as militating against our conclusion. That provision preserves desert land entries, homestead entries, scrip locations, etc., on the public lands added to the national forest.

Our view of the case at bar is further buttressed by the opinion of the Solicitor of the Department of Agriculture, No. 5016, of July 8, 1944, which reaches the same result. Moreover, where contemporaneous and practical interpretation has stood unchallenged for a considerable length of time, it will be regarded as of great importance in arriving at the proper construction of a statute. United States v. State Bank of North Carolina, 6 Pet. (31 U.S.) 29 (1832). Cf. SUTHERLAND, STATUTORY CONSTRUCTION, § 5104 (3d ed. 1943).

It follows, therefore, that mining claims on the purchased lands within the area described in the Kaniksu Act may not be declared null and void ab initio for the reasons stated in the Oregon state office decision. Such mining claims, located after acquisition of the lands by the United States and after the date of the Kaniksu Act, must be afforded due process, including proper notice and an opportunity for hearing before being subject to cancellation. Cf. Mrs. Marion E. Beresford, A-30015 (April 6, 1964).

Therefore, 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 vacated and the case is remanded to the Bureau of Land Management for further appropriate action not inconsistent herewith.

Frederick Fishman, Member

We concur:

Edward W. Stuebing, Member

Newton Frishberg, Chairman