

STATE OF WYOMING

IBLA 72-433

Decided March 29, 1974

Appeal by the State of Wyoming from a decision by the Wyoming State Office, Bureau of Land Management, rejecting an application (W-33240) for a patent to school land in place.

Reversed and remanded.

School Lands: Generally--Surveys of Public Lands: Generally

The State of Wyoming does not lose its vested rights to a school section which passed to it upon its admission into the Union upon resurvey under the Act of May 29, 1908, 35 Stat. 465, unless the state elects to accept the resurveyed section and to waive its claim to the school section as originally surveyed.

School Lands: Generally

If the State of Wyoming chooses to accept other land offered as a school section based on a resurvey, under the Act of May 29, 1908, there must be a formal waiver by the state of the originally surveyed school section and a formal document of acceptance by the United States Government, and in the absence of such waiver and acceptance, title to the original section remains in the state.

APPEARANCES: A. E. King, Commissioner of Public Lands, Cheyenne, Wyoming, for the appellant; David K. Grayson, Esq., Office of the Solicitor, Department of the Interior, for the Bureau of Land Management.

## OPINION BY ADMINISTRATIVE JUDGE RITVO

The State of Wyoming has appealed to the Secretary of the Interior from a decision by the Bureau of Land Management's Wyoming State Office, dated May 1, 1972, denying its application for a patent to school section land in place. The State of Wyoming filed a patent application on January 31, 1972, for sec. 36, T. 16 N., R. 103 W., 6th P.M., Wyoming, as originally surveyed. The State Office found the application defective since the land applied for was not the school section land designated as such on the official plat, as resurveyed, in lieu of what was sec. 36, T. 16 N., R. 103 W., 6th P.M., of the original survey.

The problem in this case arises from the fact that many of the original surveys in Wyoming were found to be inaccurate, erroneous, or obliterated. By several statutes in 1903, 1905, and 1908, 1/ Congress directed that some 12,000,000 acres be resurveyed. T. 16 N., R. 103 W., 6th P.M., Wyoming, was one of the areas resurveyed pursuant to the 1908 Act.

The original survey had been approved on February 10, 1883. The resurvey of the township was made and approved on March 4, 1913. The resurvey placed section 36 as originally surveyed completely out of and to the south and west of section 36 as resurveyed. The original section 36 was not segregated by the surveyor at the time of resurvey. Instead, as a result of correspondence in 1913 with the Commissioner of Public Lands for the State of Wyoming, the United States Surveyor General's Office designated the following lands and proposed that the State accept the land in lieu of the original section 36:

- T. 15 N., R. 103 W., P.M., Wyoming
  - sec. 2, lots 6, 7, 8, SW 1/4 NE 1/4 and S 1/2 NW 1/4
  - sec. 3, lot 5
- T. 16 N., R. 103 W.,
  - sec. 34, lots 2 and 3
  - sec. 35, S 1/2.

While there was no formal acceptance of the proposal, the State Office determined that it had been in fact accepted. The basis of the Bureau of Land Management's determination that Wyoming accepted title to the lieu lands is a handwritten notation on the resurvey

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1/ 32 Stat. 767; 33 Stat. 992; 35 Stat. 465.

plats reading, "Accepted by the Hon. Commissioner in his letter E, May 1, 1913." The Bureau of Land Management's State Office decision in this case refers to acceptance of the proposed new lands by the Commissioner of Public Lands for the State of Wyoming. However, the assumption that "Hon. Commissioner" referred to the State Officer is disputed in a letter by the Regional Solicitor's Office in Denver, dated December 3, 1963. In that letter, Bryan L. Kepford for the Regional Solicitor, surmised that "Hon. Commissioner" on the resurvey plat referred to the Commissioner of the General Land Office and not to the Commissioner of Public Lands for the State of Wyoming.

This Board concurs in the interpretation of the Regional Solicitor that the notation on the resurvey plat was not made on behalf of the State Land Commissioner. Other correspondence included in the record adds support to our interpretation. A letter dated February 10, 1913, by the State of Wyoming's Commissioner of Public Lands to the United States Surveyor General suggested that the State might be interested in the lieu selection. The letter indicated that the State had the option to select or reject the lieu selection. If the State were to accept the arrangements, there would presumably have been a formal waiver by the State of the lands in section 36 as originally surveyed and a formal document of acceptance by the United States Government. No such documents are in the file nor is there any evidence that they ever existed. Since the letter of February 10, 1913, cannot be construed as a waiver of the State's right to the original section 36, and since there is no evidence of a later waiver, this Board concludes that Wyoming never divested itself of its interest in section 36 as originally surveyed.

Our conclusion regarding divestiture finds support in Wyoming v. United States, 310 F.2d 566 (10th Cir. 1962), cert. denied, 372 U.S. 963 (1963). This case discusses in detail the difficulties which led to the resurvey statutes and some of the problems which resulted from them. The action was brought by the United States to settle title disputes with Wyoming over grants of certain school lands which had been resurveyed. The court held that the State did not get title to both the original and resurveyed sections, but only to one of them. It held that upon resurvey the State did not lose its vested right to the school section as originally surveyed. Only if the State elected to waive the claim to such original school section and accept lieu lands would a formal divestiture occur. The State would then have title to the resurveyed section. Since, as we have seen, no waiver of the State's right to the original section 36 has been found, we conclude that the State has never waived its right and still has title to section 36 as originally surveyed. Wyoming v. United States, supra at 581.

The application submitted by the State of Wyoming for section 36 as originally surveyed should be reconsidered by the Bureau of Land Management. In the absence of a finding that the State waived its claim to this section and accepted lieu lands in its stead, all else being regular, the Bureau of Land Management should issue the State a patent for the land under the Act of June 21, 1934, 43 U.S.C. § 871a (1970).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Wyoming State Office is reversed and remanded.

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Martin Ritvo  
Administrative Judge

We concur:

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Douglas E. Henriques  
Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge

