

UNITED STATES DEPARTMENT OF AGRICULTURE,
FOREST SERVICE, STATE OF WYOMING

IBLA 74-203

Decided October 31, 1974

Appeal from letter decision of Wyoming State Office, Bureau of Land Management, dismissing protest against proposed issuance of a patent to the State of Wyoming for school section land in place.

Reversed.

1. Act of June 11, 1960--Act of April 28, 1930--Act of February 28, 1891--Conveyances: Generally--Exchanges of Land: Forest Exchanges--School Lands: Indemnity Selections

Section (i) of the Act of June 11, 1960, 74 Stat. 205, transferred to the Secretary of Agriculture the authority granted to the Secretary of the Interior under the Act of April 28, 1930, 43 U.S.C. § 872 (1970), to reconvey lands which had been conveyed to the United States pursuant to statutes authorizing lieu selections in exchange for lands under the jurisdiction of the Secretary of Agriculture. Accordingly, the Bureau of Land Management is not empowered to issue a patent for school section land in place, situated in a national forest, which was conveyed to the United States with respect to a canceled school indemnity selection made pursuant to the Act of February 28, 1891, as amended, 43 U.S.C. §§ 851, 852 (1970).

APPEARANCES: Richard L. Harris, Acting Regional Forester, United States Department of Agriculture, Forest Service, for appellant; A. E. King, Commissioner of Public Lands for the State of Wyoming.

OPINION BY ADMINISTRATIVE JUDGE RITVO

The United States Department of Agriculture, Forest Service, has appealed to the Secretary of the Interior from a decision by the Bureau of Land Management's Wyoming State Office, dated January 17, 1974, dismissing its protest against the proposed issuance of a patent to the State of Wyoming for school section land in place.

The facts in this case are undisputed. By the Act of July 10, 1890, c. 664, § 4, 26 Stat. 222, Congress granted to the State of Wyoming for the support of common schools certain lands in place (sections 16 and 36 in each township). Title to one of these sections, sec. 36, T. 30 N., R. 119 W., 6th P.M., Wyoming, passed to the State upon the approval of the plat of survey on May 11, 1900. On June 19, 1972, pursuant to the Act of June 21, 1934, 43 U.S.C. § 871(a) (1970), the State of Wyoming filed an application for a confirmatory patent to the NW 1/4 NE 1/4 sec. 36, T. 30 N., R. 119 W., 6th P.M., Wyoming. The events which occurred between these two periods form the basis for the dispute in this case.

On July 10, 1919, the above-noted section 36 was included within the boundaries of the Bridger National Forest created by Proclamation 1529. All parties concede that the withdrawal of lands in 1919 for the national forest did not affect the State's title to section 36. See State of California, 28 L.D. 57 (1899).

The Act of February 28, 1891, c. 384, 26 Stat. 796, as amended, 43 U.S.C. §§ 851, 852 (1970), as construed by the Department and the Supreme Court, permitted the State, in the event of any of the designated lands in place after passing under the school grant should be included within a public reservation, to waive its right thereto and select in lieu thereof other lands of equal acreage from unappropriated nonmineral public lands outside the reservation. See California v. Deseret Water, Oil and Irrigation Co., 243 U.S. 415 (1917). On December 12, 1925, the State, pursuant to the 1891 Act, supra, made a lieu selection using the NW 1/4 NE 1/4 sec. 36, T. 30 N., R. 119 W., as part of the base lands. Certification of the selected land was made on April 29, 1929, and approved by the Secretary of the Interior on May 17, 1929 (List #71). Following this approval, the State of Wyoming quitclaimed to the United States its title to the base lands.

On February 5, 1938, the General Land Office, Department of the Interior, declared that indemnity school land selection list #71 was held for cancellation as certain tracts within the list were included within Public Water Reserve No. 107 created by Executive Order on April 17, 1926. The office of the Commissioner of Public

Lands appealed that decision which appeal was denied by the Assistant Secretary, State of Wyoming, A-21303 (May 12, 1938). On July 14, 1938, the General Land Office sent the State of Wyoming a copy of the decision and informed the State that the decision of the Department had become final and the case was closed. The July 14 letter included the following statement:

You will note on your records that the case is hereby closed.

The selection list is canceled as to Lot 1, Sec. 19, SE 1/4 NW 1/4 Sec. 20, T. 31 N., R. 93 W., 6th P.M., and the base area described as 6.99 acres deficiency in T. 9 N., R. 4 W.; .85 of an acre deficiency in T. 15 N., R. 60 W.; 12.19 acres deficiency in T. 21 N., R. 60 W.; 22.65 acres in Sec. 36, T. 29 N., R. 115 W.; all NW 1/4 NE 1/4 Sec. 36, T. 30 N., R. 119 W., 6th P.M., are released and may be offered as base in some future indemnity school-land selection. (Emphasis added.)

Following receipt of Wyoming's patent application, the Associate Director, Bureau of Land Management, reviewed the situation and, by his memorandum dated July 9, 1973, concluded that when the land was released from List #71, title to the NW 1/4 NE 1/4 sec. 36 again became vested in the State of Wyoming as of the date the State acquired title to the land -- May 11, 1900. On the basis of this determination, the BLM authorized the State Director, Wyoming, to proceed with the State's application for a confirmatory patent to the land.

By letter of November 7, 1973, the United States Department of Agriculture, Forest Service, protested against the proposed issuance of the patent to Wyoming. The Forest Service argued as follows:

On approval of list number 71, title to the NW 1/4 NE 1/4 of Section 36, T. 30 N., R. 119 W., 6th Principle Meridian, Wyoming * * * was relinquished by the State of Wyoming and became vested in the United States. Also at that time, since the parcel was within the Bridger National Forest by virtue of proclamation 1529, dated July 10, 1919, it became a part of said National Forest and was withdrawn for National Forest purposes.

* * * * *

* * * [O]nce the lands had been relinquished to the United States and became withdrawn for National Forest purposes, release of the base lands, in order that they may be

offered as base in some future indemnity school lands selection, could not revoke the National Forest withdrawal and reconvey these withdrawn lands to the State of Wyoming.

By decision dated January 17, 1974, the Forest Service's protest was denied. The pertinent part of the decision reads as follows:

You base your protest on the assumption that, when Indemnity List No. 71 was approved on May 17, 1929, title to the base land, including the tract at issue, became vested in the United States. You further contend that the partial cancellation of List No. 71 and the release therefrom of the NW 1/4 NE 1/4 sec. 36 as base land on July 14, 1938 in no way changed the United States' ownership of the land, but merely gave the State of Wyoming a credit for said land to be used as base for any future indemnity selection it might wish to make.

We have concluded, however, that the partial cancellation of the List had the effect of voiding the earlier approval of it as to the portion cancelled. In other words, it was as if the first action had never occurred and title remained vested in the State of Wyoming as of the date the State acquired title to the land - May 11, 1900. The establishment of the National Forest in 1919 had no effect on this status.

While it is true the State of Wyoming could have used the land as base in a new indemnity school land selection in the following years, the State did not do so. The amendments to sections 2275 and 2276 of the Revised Statutes on August 27, 1958 and June 24, 1966 now preclude the use of this land as base in any selection. Public Law 85-771, which was approved August 27, 1958, amended the sections referenced herein to permit States to make lieu selections only for lands lost to the States prior to survey. The June 24, 1966 amendment (P.L. 89-470) further amended the sections by deleting the words "prior to survey" and replacing them with "before title could pass to the State."

Accordingly, your protest is hereby dismissed.

On appeal, the Forest Service reasserts the arguments presented in its protest and once again urges that after all of the conditions for indemnity selection had been met and the indemnity list approved by the Secretary of the Interior, the base lands were acquired by

the United States on the date of such approval, and said base lands, being within the Bridger National Forest, were withdrawn from future appropriation by the State of Wyoming.

We need not pass upon appellant's contention because the application for patent must be rejected for another reason. ^{1/} The State of Wyoming filed an application pursuant to 43 U.S.C. § 871(a) (1970), for a confirmatory patent in order to gain clear title to the base lands in question. The statute provides the following:

The Secretary of the Interior shall upon the application by a State cause patents to be issued to the numbered school sections in place, granted for the support of common schools by the Act approved February 22, 1889, by sections 870 and 871 of this title, and by any other Act of Congress, that have been surveyed, or may hereafter be surveyed, and to which title has vested or may hereafter vest in the grantee States, and which have not been reconveyed to the United States or exchanged with the United States for other lands. (Emphasis added.)

We note without comment that § 871(a) does not apply to lands which have been reconveyed to the United States.

Under the circumstances of this case we believe the State followed an incorrect procedure for clearing title to the lands in question.

To understand the problem raised by this appeal, a brief review is helpful. In the course of the administration of the public lands, Congress in a number of instances provided that a person owning land could convey his land to the United States and receive other land, or rights to select other land, in lieu thereof. From time to time after the private land had been conveyed to the United States, the transaction was not completed by a grant of public land to the conveyor. In the absence of a statute, the Secretary of the Interior (or any other official) had no authority to reconvey the land. George L. Ramsey, 58 I.D. 272, 305 (1943); W. J. Carney, 50 L.D. 435, 437 (1924).

The Act of September 22, 1922, 42 Stat. 1017, was passed to afford relief to certain persons who, pursuant to the Act of July 4, 1897, 30 Stat. 11, 36, relinquished to the United States lands in national forests in expectation of receiving lands in exchange, but where the exchanges were uncompleted or had been defeated. Udall v.

^{1/} For a discussion of the rights to land conveyed to the United States in such uncompleted exchanges, see Masonic Homes of California, 4 IBLA 23, 78 I.D. 312 (1971).

Battle Mountain Co., 385 F.2d 90, 92 (9th Cir. 1967). The Act authorized the Commissioner of the General Land Office to quitclaim the relinquished land to such persons. The 1922 act expired by its terms in five years.

Section 6 of the Act of April 28, 1930, 46 Stat. 257, 43 U.S.C. § 872 (1970), again authorized the Commissioner of the General Land Office to issue quitclaim deeds in certain more extensive circumstances which included aborted exchanges involving base lands in national forests. It provided in pertinent part:

[W]here a conveyance of land has been made or may hereafter be made to the United States in connection with an application for amendment of a patented entry or entries, for an exchange of lands, or for any other purpose, and the application in connection with which the conveyance was made is thereafter withdrawn or rejected, the Secretary of the Interior is hereby authorized and directed, if the deed of conveyance has been recorded, to execute a quitclaim deed of the conveyed land to the party or parties entitled thereto. 2/ (Emphasis added.)

[1] The Secretary of the Interior, however, no longer has authority under the Act of April 28, 1930, to issue quitclaim deeds for lands conveyed to the United States in connection with exchange transactions relating to lands in national forests. See John C. Brinton, 13 IBLA 69, 71 (1973); Masonic Homes of California, 4 IBLA 23, 26, 78 I.D. 312, 314 (1971). The Act of June 11, 1960, 74 Stat. 205, transferred such authority to the Secretary of Agriculture:

[T]he following functions are hereby transferred to the Secretary of Agriculture:

* * * * *

(i) The function of the Secretary of the Interior (originally vested in the Commissioner of the General Land Office) under section 6 of the Act of April 28, 1930 (46 Stat. 257; 43 U.S.C. 872), with respect to execution of quitclaim deeds for lands conveyed to the United States in connection with exchange transactions involving lands under the jurisdiction of the Secretary of Agriculture.

We note that the Act of July 6, 1960, 74 Stat. 334, provides in section 1 that upon demand made within one year from the date of enactment, payment of \$ 1.25 per acre, with interest, would be

2/ "Secretary of the Interior or such officer as he may designate" was substituted for "Commissioner of the General Land Office" on authority of the 1946 Reorg. Plan No. 3, 11 F.R. 7876, 60 Stat. 1100.

made for lands held by the United States which it had received under the Forest Reserve Lieu Land Act of June 4, 1897, 30 Stat. 11, 36, as amended and supplemented by the Acts of June 6, 1900, 31 Stat. 588, 614, March 3, 1901, 31 Stat. 1010, 1037, March 3, 1905, 33 Stat. 1264, and the Act of September 22, 1922, supra, as the basis for lieu selections, provided that the person who relinquished such lands, or his successor in interest, had not theretofore received his lieu selection, a reconveyance of his lands, or authority to cut and remove timber. Section 3 of the July 6, 1960, Act provides:

The Act of September 22, 1922 (42 Stat. 1017; 16 U.S.C. 483) is hereby repealed. No reconveyance of lands to which section 1 of this Act applies shall hereafter be made under section 6 of the Act of April 28, 1930 (46 Stat. 257; 43 U.S.C. 872). (Emphasis added.)

The Act's prohibition against reconveyance only applies to exchanges which occurred pursuant to the statutes cited in section 1 of the Act. The Act of 1891, supra, is not one of the acts listed in section 1. Thus, it appears that the Secretary of Agriculture still has authority to issue quitclaim deeds for national forest base lands with respect to canceled school indemnity selections made pursuant to the 1891 Act, as amended, 43 U.S.C. § 851, 852 (1970), under which the State's uncompleted exchange was initiated.

Based on the above, we conclude that the Department of the Interior is without authority to reconvey lands granted to the United States in connection with exchange transactions involving lands under the jurisdiction of the Department of Agriculture. Accordingly, the Bureau of Land Management is not empowered to proceed with the State of Wyoming's application for a confirmatory patent.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision dismissing the Forest Service's protest against the proposed issuance of a patent to the State of Wyoming is reversed.

Martin Ritvo
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Joseph W. Goss
Administrative Judge

