

Editor's note: Reconsideration denied by order dated April 18, 1977; Appealed -- remanded, Civ. No. S-83-96-HDM (D.Nev. Dec. 11, 1987); modified on remand -- See Ben Cohen (On Judicial Remand), 103 IBLA 316 (Aug. 5, 1988); returned to court -- aff'd in part, sub nom. Sudhir Sahni v. Watt, (Jan. 17, 1990), aff'd, (Jan. 14, 1991), aff'd, No. 91-15398 (9th Cir. April 27, 1992), 961 F2d 217 (Table)

BEN COHEN
RAY C. NORDSTROM

IBLA 75-396

Decided August 18, 1975

Appeal from decision of Nevada State Office, Bureau of Land Management, rejecting application for satisfaction of scrip claims.

Affirmed.

1. Res Judicata -- Rules of Practice: Appeals: Generally

Where an appeal has been taken and a final Departmental decision has been reached, the principle of res judicata will operate to bar consideration of a new appeal arising from a later proceeding involving the same claim and same issues, absent compelling legal or equitable reasons for reconsideration.

2. Exchanges: Forest Exchanges -- Scrip: Special Types of Scrip -- Scrip: Validity

An application for satisfaction of forest lieu selection rights filed after December 31, 1969, will be rejected, as all such claims which had not been satisfied on that date, or for which no satisfaction had been demanded, expired by operation of law.

3. Exchanges: Forest Exchanges -- Scrip: Recordation -- Scrip: Special Types of Scrip -- Scrip: Validity

A forest lieu selection right is extinguished when the base lands are reconveyed by the United States to the principal (the party who originally conveyed the land to the United States). The purported agent or attorney in fact of the principal has no rights thereafter against the United States even if he recorded his power of attorney and other selection documents prior to the reconveyance.

APPEARANCES: Ben Cohen, Esq., Miami Beach, Florida, for appellants.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Ben Cohen and Ray C. Nordstrom appeal from the February 20, 1975, decision of the Nevada State Office, Bureau of Land Management (BLM), which rejected their application for satisfaction of certain scrip claims. Appellants have claimed 149.37 acres of land in the NE 1/4, section 32, T. 21 S., R. 61 E., Mount Diablo Meridian, Nevada. Their claim is based on two scrip claims - 80 acres of forest lieu scrip and 80 acres of soldiers' additional homestead scrip. "Scrip" is merely legal shorthand for a right in certain circumstances to receive land from the public domain, or an equivalent monetary value. The right is based on either service to the United States, as is the case with soldiers' additional homesteads, or upon relinquishment of lands to the United States, as is the case with forest lieu selections. In order to catalog all outstanding scrip claims to the public domain Congress required that all such claims must be recorded within two years of August 5, 1955. 69 Stat. 534. In order to finally satisfy and extinguish those claims, Congress required that claims recorded under the Act of August 5, 1955, be presented by January 1, 1970, or, in the case of soldiers' additional homesteads, by January 1, 1975. 78 Stat. 751. Failure to present the claims on time would render them unenforceable. 78 Stat. 751.

[1] The 80 acres of soldiers' additional homestead scrip is based on a claim previously rejected by this Department in Charles M. Dollarhide, A-29933 (March 5, 1964). In that case the Department held that a soldiers' additional homestead application will be rejected when the applicant cannot establish the identity of the serviceman and original entryman as the same person. The claim in that case was based on a homestead entry by John Jones, who was purported to be the same person as one John Jones who had served in the Army of the United States. Because the soldier signed military and pension documents with an X, and because the homestead entryman signed in writing, the Department required that the applicant supply information showing that the soldier and entryman were the same person. This the applicant failed to do. Appellants in the present case have acquired the claims by assignment but offer no further evidence that the soldier and the entryman are the same person. In the absence of compelling legal or equitable reasons for reconsideration, the principle of res judicata, and its counterpart, finality of administrative action, will operate to bar consideration of a new appeal arising from a later proceeding involving the same claim and the same issues. See United States v. Blythe, 16 IBLA 94, 101 (1974); L. M. Perrin, Jr., 9 IBLA 370, 373 (1973); Elsie V. Farington, 9 IBLA 191, 194 (1973); Eldon L. Smith, 6 IBLA 310, 312 (1972); Gabbs Exploration Co., 67 I.D.

160, 165-66 (1960), aff'd Gabbs Exploration Co. v. Udall, 315 F.2d 37 (D.C. Cir.), cert. denied, 375 U.S. 822 (1963). In any event, appellants have submitted no evidence which would alter the original conclusion of the Department.

[2] Appellants also offer 80 acres of forest lieu scrip. However, the time for redeeming forest lieu scrip has passed. The Act of August 31, 1964, 78 Stat. 751, required that such claims be presented prior to January 1, 1970, or they would not be recognized. Bronken v. Morton, 473 F.2d 790, 793 (9th Cir. 1973). There is no evidence in the case file that appellants ever filed a claim based on their forest lieu scrip prior to January 1, 1970. Therefore, their claim is now void. 78 Stat. 751; Bronken v. Morton, supra.

[3] Nevertheless, appellants argue that their right should be considered valid because "Their selection rights above mentioned could not be satisfied by January 1, 1970, as the Department of the Interior, Bureau of Land Management refused to accept the selection right as approved in the exemplified copy attached to their scrip application." We assume that appellants mean that the basis for their selection was extinguished in 1957, when, pursuant to the Act of April 28, 1930 (46 Stat. 257), the BLM conveyed by quit-claim deed any interest in the base lands to appellants' principal (the party who originally conveyed the land to the United States). 1/ As appellants could only act as agents or attorneys for a principal in the selection of forest lieu lands, reconveyance of the lands to the principal terminates the basis of any right of an agent or attorney in fact to select the lands, notwithstanding that such agent or attorney may have recorded the right prior to reconveyance of the land to the principal. Richard M. Lade, A-29121 (January 10, 1963), aff'd, Lade v. Udall, 432 F.2d 254 (9th Cir. 1970); Richard M. Lade, 1 IBLA 192 (1970); Richard M. Lade, 1 IBLA 189 (1970); see also E. L. Cord, 10 IBLA 363, 80 I.D. 301, 304 (1973); Battle Mountain Co., A-29146 (January 31, 1963), aff'd, Udall v. Battle Mountain Co.,

1/ Possibly, appellants are referring to a statement by the BLM that the BLM would not have accepted their application, as the land they wish to select had not been classified for forest lieu selection. That statement of the BLM was correct, as no application could be filed after July 1, 1966, for lands not then classified as available for forest lieu selection. Bronken v. Morton, 473 F.2d 790 (9th Cir. 1973). As the 9th Circuit noted in its decision, applications filed before July 1, 1966, could be filed for lands that could be classified for forest lieu selections, yet were not part of a pool of land set aside for that purpose.

385 F.2d 90 (9th Cir. 1967), cert. denied, 390 U.S. 957 (1968). Moreover, any assertion that the United States acted in derogation of appellants' rights in restoring title to the original grantees, is defeated by their failure to file their claim prior to January 1, 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 appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

I concur:

Joseph W. Goss
Administrative Judge

FREDERICK FISHMAN, ADMINISTRATIVE JUDGE, CONCURRING

I believe the main opinion properly disposed of the case on the basis of res judicata, as to the soldier's additional homestead claim.

Even were that claim to be considered now on its merits, it would fail.

John Jones, who served in Co. "E", 56th Regiment of Illinois Volunteers during the Civil War, could not write. A John Jones made Homestead Entry No. 1244 at Springfield, Missouri on February 22, 1868, for the NW 1/4 NE 1/4 sec. 18, T. 22 N., R. 29 W. containing 40 acres. The entry papers for the homestead contain two documents with the signature "John Jones".

Appellants in their Statement of Reasons assert as follows:

Appellants state that John Jones in the early 1860's enlisted in the Union army as a teenager who at the time of the enlistment signed his enlistment papers with an "X". Appellants also state that before John Jones died in the 1890's, he had learned to write and no longer signed his name with an "X". The assignment of John Jones Soldiers' Additional Rights were acquired with proper consideration and duly recorded and registered under the Recording and Registration Act of August 5, 1955 (69 Stat. 534, 535). Appellants as the present owners and holders of said Soldiers' Additional Rights were unreasonably required to establish the approximate date that this Civil War soldier learned to write. It was common knowledge that in the 1860's the farm boys of Illinois (John Jones was from a small town) were mostly illiterate and the signing of legal documents with an "X" was very common.

One of the essential ingredients in establishing a soldier's additional homestead claim is proof that the veteran and entryman were one and the same individual. 43 U.S.C. § 274 (1970). A mere allegation to that effect has no probative impact. Tibor W. Fejer and Robert B. McClurkin, 11 IBLA 166 (1973); George Rodda, Jr., 7 IBLA 79 (1972).

It has been a cardinal principle of public land administration that an applicant asserting a claim to receive the benefits of an Act of Congress has the burden of furnishing sufficient evidence of his entitlement thereto. Van Ragsdale, A-21175 (July 13, 1938), I.G.D. 61. But it does not require well-nigh irrefragable proof to establish the claim. George A. Evans, A-30987 (October 16, 1968).

The point I wish to make is that the assertions in the Statement of Reasons have absolutely no probative impact whatsoever. They are purely forensic in character. While admittedly it is difficult, if not impossible at this late date, to prove the identity of the soldier with the entryman, on the basis of the present record we could only indulge in conjecture to find such identity. Documents which purport to be typed copies of crucial instruments are not a sufficient predicate for disposing of public lands.

Frederick Fishman
Administrative Judge

21 IBLA 335

