

MASONIC HOMES OF CALIFORNIA

IBLA 83-43

Decided January 10, 1983

Appeal from decision of California State Office, Bureau of Land Management, rejecting application for quitclaim deed. CA 4908.

Affirmed.

1. Act of July 6, 1960: Conveyances: Generally -- Lieu Selections --
Statutory Construction: Legislative History

An application for a quitclaim deed under sec. 6 of the Act of Apr. 28, 1930, based upon a conveyance to the United States of land as a basis of lieu section, which conveyance was made pursuant to the Act of June 4, 1897, is properly rejected because the Act of July 6, 1960, precludes the Department from utilizing the 1930 act for that purpose.

APPEARANCES: M. William Tilden, Esq., San Bernardino, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Masonic Homes of California (Masonic) has appealed the August 18, 1982, decision of the California State Office, Bureau of Land Management (BLM), rejecting its application for a quitclaim deed from the Government to it for a 40-acre parcel of Federal land in sec. 29, T. 26 S., R. 33 E., Mount Diablo meridian, pursuant to section 6 of the Act of April 28, 1930, 46 Stat. 257, 43 U.S.C. § 872 (1976). We hold that BLM properly rejected the application.

Masonic's claim to title to this land may be traced back to the interests of Hiram M. Hamilton, who owned this parcel (the base parcel) until September 1900, when he deeded it to the United States, pursuant to the Act of June 4, 1897, 30 Stat. 11, 36, for inclusion in a public forest reserve. Hamilton also deeded two other base parcels to the United States pursuant to this section. See *Masonic Homes of California*, 4 IBLA 23, 24 (1971).

The Act of June 4, 1897, authorized Hamilton to select an equal amount of vacant land open to settlement outside the forest reserve in lieu of the base parcels which he deeded to the United States. He filed application No. 4064 with the General Land Office to select lands in lieu of the subject base parcel. However, on April 11, 1911, this application was rejected for failure to meet pertinent requirements. Although the lieu selection was never consummated, the United States never deeded back the base parcels to Hamilton. In February 1932, Hamilton deeded whatever interests he held in the subject base parcel to Masonic.

On May 10, 1982, Masonic filed its application ^{1/} asserting that, "by the decree of the Act of March 3, 1905 (33 Stat. 1264) * * * the United States no longer claimed any right, title or interest in the base land." Masonic asserted that, by reason of Hamilton's conveyance to it, it is the legal owner of the base parcel, and that its title is clouded only by Hamilton's deed to the United States in 1900. Accordingly, it filed its application requesting that BLM issue a disclaimer of the United States interest in the property in order to clear its title. BLM declined to do so, and Masonic appealed.

[1] In 1971, this Board affirmed BLM's rejection of a similar application by Masonic for a conveyance of the interest of the United States in another base parcel previously owned by Hiram Hamilton, the SW 1/4 SE 1/4 sec. 36, T. 7 S., R. 22 E., Mount Diablo meridian. Masonic Homes of California, supra. In that case, as here, Masonic based its request for reconveyance on section 6 of the Act of April 28, 1930, supra, and argued that the operation of this Act was not barred by the Act of July 6, 1960 (the Sisk Act), 74 Stat. 334.

In Masonic Homes of California, supra, we cited the legislative history of the Sisk Act and concluded that it did cover these circumstances and that Congress intended by its passage to repeal any authority to execute a quit-claim deed in these circumstances. Id. at 26-27; accord, Udall v. Battle Mountain Co., 385 F.2d 90, 96 (9th Cir. 1967), cert. denied, 390 U.S. 957 (1968). Section 3 of the Sisk Act expressly provides that no reconveyance of lands such as these may be made under section 6 of the Act of April 28, 1930. Accordingly, BLM properly concluded that it had no authority to grant Masonic's application for reconveyance.

Masonic asserts again, as it did in 1971, that its property has been taken without compensation. As we noted in Masonic Homes of California, supra, Congress expressly provided in section 1 of the Sisk Act the mechanism for compensating those who were precluded from completing their lieu selections. Apparently, Masonic failed to avail itself of this procedure within the 1-year time limit prescribed therein by Congress. Under section 4 of the Sisk Act, upon Masonic's failure to make demand for payment in 1961, the parcel became part of the surrounding area, which was embraced by a withdrawal

^{1/} Masonic previously filed an application on Feb. 17, 1978, seeking relief under section 315 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1745 (1976). It withdrew this application on May 10, 1982.

for the Department of the Army, per Public Land Order No. 548. The legislative history of the Sisk Act shows that Congress and the Department of Justice fully considered the constitutionality of this procedure. See Masonic Homes of California, *supra* at 27-28. We are bound to follow its provisions.

Accordingly, 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.

Douglas E. Henriques
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

James L. Burski
Administrative Judge

