

**Editor's note: Appealed -- aff'd, Civ.No. 83-1939 (D.D.C. May 15, 1984), 587 F.Supp. 748; reversed, No. 84-5440 (D.C. Cir. Oct. 9, 1987), 830 F.2d 1168**

SANTA FE PACIFIC RAILROAD CO.

IBLA 82-449

Decided April 19, 1983

Appeal from decision of Arizona State Office, Bureau of Land Management, rejecting application for patent of railroad indemnity lands. A-10158.

Affirmed as modified.

1. Act of July 27, 1866--Railroad Grant Lands

Where there is a deficiency of indemnity land to satisfy losses in place land, the right of a railroad vests to select indemnity under a grant in aid of construction. That right can be conveyed to an innocent purchaser for value and is not affected by a subsequent release filed pursuant to section 321(b) of the Transportation Act of 1940, 49 U.S.C. § 65(b) (1976).

2. Act of July 27, 1866--Railroad Grant Lands

A railroad's right to select indemnity land under the Act of July 27, 1866, which had vested, was a claim which was required to be recorded with the Department within 2 years from the effective date of the Act of Aug. 5, 1955, 69 Stat. 534. Failure to present a claim within the time established by the Act barred acquisition of lands. A list of innocent purchasers for value filed with the Department in 1940 pursuant to sec. 321(b) of the Transportation Act, 49 U.S.C. § 65(b) (1976), did not constitute compliance with the 1955 recordation requirement.

APPEARANCES: Edward Weinberg, Esq., Carol MacKinnon, Esq., Philip L. Chabot, Jr., Esq., Washington, D.C., for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

The Santa Fe Pacific Railroad Company (Santa Fe), has appealed from a decision of the Arizona State Office, Bureau of Land Management (BLM), dated

January 7, 1982, rejecting its application for a patent of railroad indemnity lands, filed pursuant to section 321(b) of the Transportation Act of 1940, 49 U.S.C. § 65(b) (1976), on behalf of Perrin Properties, Inc.

On September 6, 1977, appellant filed a patent application for 14,632.72 acres of land situated in the Prescott National Forest in Yavapai County, Arizona. 1/ The land had originally been part of that land within the limits of the lands made available to the Atlantic and Pacific Railroad Company (Atlantic and Pacific) under the Act of July 27, 1866, 14 Stat. 292, in order to aid in construction of the railroad. The grant included every odd-numbered section of nonmineral public land 2/ within 40 miles on either side of the railroad line (place land) and the right to select odd-numbered sections within the next 10 miles outside the 40-mile strip (indemnity land), in order to make up any shortfall in the place lands because of superior

1/ The lands were described as follows in the application:

Description	Section	Township	Range	G&SRM
All	3	17 N.	6 W.	"
All	"	"	"	"
All	"	"	All	11 " " " " All
	15 " "	" "	All	17 " " " " All
	19 " "	" "	All	21 " " " " All
	23 " "	" "	All	27 " " " " All, except N 7 18 N. 6 W.
1/2 of NW 1/4 of NE 1/4	29 " "	" "	All	
G&SRM				
All	9 " "	" "	All	11 " " " "
All	15 " "	" "	All	17 " " " "
All	19 " "	" "	All	29 " " " "
All	31 " "	" "	All	33 " " " "
All that portion of the E 1/2				
of E 1/2 not in the Baca Grant		1 17 N.	7 W.	G&SRM All that portion of the E 1/2
of E 1/2 not in the Baca Grant		13 " "	" "	All that portion of the E 1/2
of E 1/2 not in the Baca Grant		13 18 N.	7 W.	G&SRM All that portion of the E 1/2
of E 1/2 not in the Baca Grant		25 " "	" "	With its patent application, appellant also

submitted a quitclaim deed, dated Aug. 30, 1977, of the above-described land to Perrin Properties, Inc. 2/ In a mineral report dated Oct. 15, 1981, a Forest Service mineral examiner concluded that the lands included in appellant's patent application were "of non-mineral character between March 12, 1872 and October 15, 1896."

claims. That Act also provided that the railroad line would be subject to use by the Government for military and postal service and subject to congressional regulation restricting charges for such use. On March 31, 1872, Atlantic and Pacific filed a map with the Secretary of the Interior identifying the location of the railroad line. At that time the rights to the lands granted became fixed and determined. United States v. Northern Pacific Railroad, 256 U.S. 51 (1921). On January 20, 1887, Atlantic and Pacific filed an indemnity selection for 1,244,160 acres of land under the Act of July 27, 1866. The selection was rejected because the land was unsurveyed and, thus, not subject to selection. Appellant is a successor in interest to Atlantic and Pacific under the Act of March 3, 1897, 29 Stat. 622. <sup>3/</sup>

Even though it could not make selections, Atlantic and Pacific contracted with numerous parties prior to 1900 to sell its interest in the granted lands. By deed dated October 15, 1896, Atlantic and Pacific and its receiver, C. W. Smith, conveyed 21,488 acres of land, including the land involved herein, to E. B. and Lilo M. Perrin and Robert Perrin. <sup>4/</sup> By Presidential Proclamation No. 782, dated November 26, 1907, these and other lands were included in the Prescott National Forest. The interests of the Perrins subsequently passed to Perrin Properties, Inc., on July 31, 1935. <sup>5/</sup>

On September 18, 1940, Congress passed the Transportation Act of 1940, 54 Stat. 898. Section 321(b) of that Act, 49 U.S.C. § 65(b) (1976), provides for certain rate benefits to a railroad in exchange for a release of any claim it may have against the United States to lands or interests in land granted to it. However, section 321(b) further provides that "[n]othing in this section shall be construed \* \* \* to prevent the issuance of patents confirming the title to such lands as the Secretary of the Interior shall find have been heretofore sold by any such carrier to an innocent purchaser for value \* \* \*." 49 U.S.C. § 65(b) (1976). On December 17, 1940, appellant executed a release in accordance with the terms of section 321(b) and 43 CFR Part 273 (1940). The release stated that it "does not embrace \* \* \* lands sold by the company to innocent purchasers for value prior to September 18, 1940." Along with the release, appellant filed a list of innocent purchasers for value in accordance with 43 CFR 273.65(c) (1940). The list included the 1896 deed to E. B. and Lilo M. Perrin and Robert Perrin. On March 1, 1941, the release and the list of innocent purchasers for value were accepted and approved by the Secretary of the Interior. 6 FR 2634 (May 29, 1941).

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<sup>3/</sup> Pursuant to an agreement with Atlantic and Pacific, Santa Fe constructed the railroad line west from Albuquerque, New Mexico, and in accordance with the Act of Mar. 3, 1897, is the owner of the Atlantic and Pacific land grant.

<sup>4/</sup> E. B. Perrin subsequently requested the Secretary of the Interior to compel appellant to select 21,793.88 acres of indemnity land in accordance with the October 1896 deed. In Perrin v. Santa Fe Pacific Railroad, 43 L.D. 467 (1914), the First Assistant Secretary concluded that the Department did not have jurisdiction to adjudicate a dispute between a grantee railroad company and a third party or to compel the company to select particular tracts of indemnity land.

<sup>5/</sup> In response to a letter from BLM, dated Oct. 31, 1977, appellant filed various documents with BLM on Nov. 10, 1977, indicating the chain of title to Perrin Properties, Inc., in compliance with 43 CFR 2631.1.

On December 10, 1969, L. M. Perrin, Jr., and Perrin Properties, Inc., filed a request with BLM for a "cash settlement in satisfaction of our Railroad Lieu selection under the Transportation Act [of] September 18, 1940." The request applied to 21,454 acres of land, including the land involved herein. BLM treated the request as a cash election application (ES 6794) filed pursuant to the Act of August 31, 1964, 78 Stat. 751, and 43 CFR 2221.2-3 (1969). In a decision dated March 5, 1971, BLM rejected the application holding that the appellants had no outstanding scrip or selection rights which would be entitled to a cash redemption. BLM stated that any selection rights with respect to indemnity land had terminated when the Santa Fe executed its release pursuant to section 321(b) of the Transportation Act of 1940, supra. BLM also noted that the failure to record timely a claim for scrip or selection rights, in accordance with the Act of August 5, 1955 (Recordation Act of 1955), 69 Stat. 534 (quoted in the note to 43 U.S.C. § 274 (1976)), and 43 CFR 2221.1-2 (1969), also barred a cash redemption.

In L. M. Perrin, Jr., 9 IBLA 370 (1973), the Board affirmed BLM's rejection of the appellants' cash election application. The Board stated that the crux of BLM's rejection was the conclusion that any selection rights with respect to indemnity land had terminated with the filing of the section 321(b) release. The Board noted that while a railroad had a right to select indemnity lands to replace losses in place lands, that right "becomes an estate in land only when the right to select indemnity land has been exercised." L. M. Perrin, Jr., supra at 373. Accordingly, relying on Atlantic and Pacific Railroad, 58 I.D. 577, 587 (1944), the Board concluded that a release pursuant to section 321(b) of the Transportation Act of 1940, supra, had the effect of relinquishing this "inchoate right" and, furthermore, that a railroad could not take advantage of that statutory provision on behalf of an innocent purchaser for value. This position was summarized by the Assistant Secretary in Atlantic and Pacific Railroad, supra at 587-88, on a motion for rehearing, as follows:

[T]he release, in harmony with the provisions of section 321(b), did not except or purport to except inchoate rights to land. The language of the release and of the statute makes this very clear. Both refer to "lands" sold, selected, or patented. There is no mention of any unperfected right to acquire land. It follows that by filing its release, the Santa Fe Company relinquished its inchoate right to select indemnity land although in the absence of such release the United States could not have disposed of the land in derogation of the company's rights. The fact that the company had previously attempted to convey the land for which it now seeks a patent is immaterial since it had no title to the land and could convey none. At most the company effected nothing more than a promise to sell or an assignment of the benefits to accrue from the exercise of its selection right. There was no sale of land to an innocent purchaser and the company cannot claim the advantage of such procedure to avoid the consequences of the release.

The Board also noted in L. M. Perrin, Jr., supra, that failure to record timely under the Recordation Act of 1955 also barred a cash redemption. <sup>6/</sup>

In its January 1982 decision, rejecting appellant's patent application, BLM relied on the principles enunciated in L. M. Perrin, Jr., supra, namely, that where a railroad has no estate in indemnity lands by virtue of not having selected the land, the filing of a release pursuant to section 321(b) of the Transportation Act of 1940 effectively extinguishes any claim to the land. BLM noted that the land was available for selection in 1936, after being surveyed, but that no selection was made prior to the 1940 release.

BLM recognized that there was an exception to the general rule regarding the right to select indemnity land set forth in Chapman v. Santa Fe Pacific Railroad, 198 F.2d 498 (1951), cert. denied, 343 U.S. 964 (1952). That exception applied where there was a deficiency in indemnity lands, such that they were insufficient to make up losses in place lands. In such circumstances, the right of selection vested at the time of the deficiency, without the necessity of an actual selection. BLM noted that the Board had not considered Chapman in L. M. Perrin, Jr., supra, but concluded that even if Chapman was held to be controlling, there had been "no showing that a deficiency did exist." BLM further explained that even if a right of selection had vested, it was lost by a failure to record timely in accordance with the Recordation Act of 1955.

Finally, BLM stated that appellant had not submitted evidence necessary to determine that the Perrins were innocent purchasers for value, as required by 43 CFR 2631.1. Moreover, even if they did qualify as innocent purchasers, BLM stated that the patent application might be barred by the doctrine of laches, citing Southern Pacific Transportation Co., 54 IBLA 174 (1981).

In its statement of reasons for appeal, appellant contends that Atlantic and Pacific, its predecessor in interest, had a vested right to select indemnity land, by virtue of the deficiency in indemnity lands to make up losses in place lands. It asserts that this vested right could then be conveyed to an innocent purchaser for value and could not be divested by inclusion within a forest reserve or by the filing of a release under section 321(b) of the Transportation Act of 1940. Appellant states that the question of a deficiency was fully litigated in Chapman v. Santa Fe Pacific Railroad, supra, and that the existence of a deficiency must be accepted under the doctrine of collateral estoppel. Appellant states that the only remaining question is whether the Perrins were innocent purchasers for value. Appellant contends that they were innocent purchasers for value in that they acted in good faith and gave valuable consideration to Atlantic and Pacific in exchange for the 1896 deed. Such consideration consisted of property and the settlement of a lawsuit between the parties.

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<sup>6/</sup> On Oct. 9, 1975, Perrin Properties, Inc., also filed a patent application (A 9260) pursuant to section 321(b) of the Transportation Act of 1940, supra. By letter dated July 7, 1976, BLM held that Santa Fe was the proper party applicant under 43 CFR 2631.1 and that BLM was without authority to accept or process the application. The case file was closed.

With respect to the question of recordation, appellant contends that the Recordation Act of 1955 has no application to selection rights under the Act of July 27, 1866. Appellant bases its conclusion on the legislative history of the recordation act. Appellant also states that in view of the fact that its claims did not have to be recorded under the Recordation Act of 1955, it was not entitled to take advantage of the cash election provision of the Act of August 31, 1964, 78 Stat. 751 <sup>7/</sup> and that L. M. Perrin, Jr., supra, should properly have been decided on that basis. The Solicitor did not appear or file an answer on behalf of BLM in this appeal.

[1] We will first address the question of whether Santa Fe had a vested right to select indemnity land. This issue is controlled by the case of Chapman v. Santa Fe Pacific Railroad, supra. <sup>8/</sup> The Chapman case involved facts similar to those in the present case. Chapman likewise stemmed from the original grant to Atlantic and Pacific under the Act of July 27, 1866, supra. In 1886 and 1894, Atlantic and Pacific, pursuant to an 1886 contract, conveyed certain indemnity lands, to the extent they had been surveyed, to the Aztec Land and Cattle Company (Aztec). On November 7, 1905, Santa Fe quitclaimed to Aztec the remaining previously unsurveyed indemnity lands. The total indemnity land conveyed was 98,690.83 acres. On August 17, 1898, the indemnity lands were withdrawn by executive proclamation for a forest reserve, described as the Black Mesa Reserve. On December 18, 1940, Santa Fe, as successor in interest to Atlantic and Pacific, filed the same release involved herein, pursuant to section 321(b) of the Transportation Act of 1940. On June 26, 1942, Santa Fe filed indemnity selections with respect to land previously conveyed to Aztec. The selections were rejected by the Commissioner of the General Land Office because no land had been identified by virtue of selections prior to the 1940 release, which the railroad then

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<sup>7/</sup> The Act of Aug. 31, 1964, 78 Stat. 751, was intended to satisfy those claims recorded under the Recordation Act of 1955. That Act provided:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, except for military bounty land warrants, all claims and holdings recorded under the Act of August 5, 1955 (69 Stat. 534, 535), which are not satisfied in one of the ways hereafter set forth, shall become null and void on the later of the two following dates: (a) January 1, 1970, \* \* \* (b) at the termination of any transaction initiated pursuant to this Act.

\* \* \* \* \*

"Sec. 6. Prior to January 1, 1970, \* \* \* any person who has a claim recorded pursuant to the Act of August 5, 1955, by written notice to the Secretary of the Interior, or any officer of the Department of the Interior to whom authority to receive such notice may be delegated, may elect to receive cash instead of public land in satisfaction of his claim, at a rate per acre equal to the average value of the lands offered by the Secretary under section 4 of this Act."

<sup>8/</sup> We feel compelled to follow the Chapman decision, although Chief Judge Stephens in his dissent persuasively sets forth the law and facts that support his view that after 1924 there was no deficiency of indemnity lands, but on the contrary, an excess of such lands to satisfy place land losses, and that, therefore, specific selection of indemnity lands by Santa Fe was necessary to acquire the right thereto. Chapman v. Santa Fe Pacific Railroad, supra, dissent at 516.

acquired and which could be conveyed to an innocent purchaser for value. Thus, the Commissioner held that Aztec was not protected by the savings clause of section 321(b) of the Transportation Act of 1940, supra. The decision was affirmed by the Assistant Secretary of the Interior. Atlantic and Pacific Railroad, 58 I.D. 588 (1944). 9/ In Chapman v. Santa Fe Pacific Railroad, supra, the circuit court, in construing the Supreme Court's decision in United States v. Northern Pacific Railroad, 256 U.S. 51 (1921), held that while, as a general rule, selection was necessary to vest a right to specific indemnity land in the grantee, there was an exception in the situation where there was a deficiency of indemnity land to satisfy losses in place land. Thus, the court held, "the right of selection vested at the earliest time there was a deficiency of indemnity lands to satisfy losses in place." Chapman v. Santa Fe Pacific Railroad, supra at 501. The court stated that where this right vested prior to a withdrawal, the withdrawal was not effective as to the indemnity lands. Moreover, the court concluded that mandamus would lie to compel the Secretary of the Interior to issue patents in response to the exercise of the appellant's vested right to select indemnity land. The duty to issue patents was "purely ministerial." Id. at 502.

The circuit court resolved the question of whether there had been a deficiency by concurring in a finding of fact by the district court in Santa Fe Pacific Railroad v. Krug, C.A. No. 23477 (D.D.C. filed Jan. 14, 1949). The lower court held that:

Prior to and at the time of the said withdrawal, and at all times thereafter to and including 1940, the unsatisfied losses in the place limits of the grant exceeded the surveyed lands within the indemnity limits of the grant available for selection, and to that extent there was and has been a deficiency in the grant since some time prior to August 17, 1898, of not less than 100,000 acres.

The circuit court concluded that this finding was "adequately supported by the evidence." Chapman v. Santa Fe Pacific Railroad, supra at 501. The extent of the deficiency is immaterial. The crucial point is that the court found that during the period from 1898 to 1940 there was a deficiency of indemnity lands in the Atlantic and Pacific grant. In this regard, we are bound by the holding in Chapman. The existence of this deficiency meant that Santa Fe had a vested right to select all of the indemnity lands. Consequently, no selection by Santa Fe was necessary to vest title in it. This right of selection was an interest which could then be conveyed to an innocent purchaser for value and would be subject to the savings clause of section 321(b) of the Transportation Act of 1940, supra.

Thus, since the present case also concerns the same land grant, the Chapman case is dispositive of whether or not there was a deficiency of indemnity lands. It was improper for BLM to assert that appellant failed to show evidence of a deficiency. The Chapman case settled that factual issue.

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9/ The decision in L. M. Perrin, Jr., supra, was based for the most part on a companion case, Atlantic and Pacific Railroad, 58 I.D. 577 (1944), decided on much the same basis, i.e., that a release under section 321(b) of the Transportation Act of 1940, supra, extinguishes a railroad's right to select indemnity land under its original land grant. This holding was expressly overruled in Chapman.

[2] We now turn to the question of whether Santa Fe's vested right was required to be recorded under the Recordation Act of 1955, 69 Stat. 534. BLM held that even if there was such a right, it was lost because it was not timely recorded under the 1955 Act.

Section 1 of the Recordation Act of 1955 reads:

That any owner of, and any person claiming rights to, Valentine scrip, issued under the Act of April 5, 1872 (17 Stat. 649); Sioux Half-Breed scrip, issued under the Act of July 17, 1854 (10 Stat. 304); Supreme Court scrip, issued under the Acts of June 22, 1860 (12 Stat. 85), March 2, 1867 (14 Stat. 544), and June 10, 1872 (17 Stat. 378); Surveyor-General scrip, issued under the Act of June 2, 1858 (11 Stat. 294); a soldier's additional homestead right, granted by sections 2306 and 2307 of the Revised Statutes; a forest lieu selection right, assertable under the Act of March 3, 1905 (33 Stat. 1264); a lieu selection right conferred by the Act of July 1, 1898 (30 Stat. 597); a bounty land warrant issued under the Act of March 3, 1855 (10 Stat. 701); or any lieu selection or scrip right or bounty land warrant, or right in the nature of scrip issued under any Act of Congress not enumerated herein (except the indemnity selection rights of any State, or the Territory of Alaska), shall, within two years from the effective date of this Act, present his holdings or claim for recordation by the Department of the Interior.

Section 4 of the Act provided that if claims were not presented within the time established by the Act, they would "not thereafter be accepted \* \* \* for recordation or as a basis for the acquisition of lands."

Section 1 of the Recordation Act applies in part to "any lieu selection or scrip right \* \* \* under any Act of Congress not enumerated herein." (Emphasis added.) The first question is whether a selection right as to indemnity lands under the Act of July 27, 1866, is to be construed as a lieu selection right. We conclude that it is. In describing the selection right under the Act of July 27, 1866, the Supreme Court in Krug v. Santa Fe Pacific Railroad, 329 U.S. 591, 595 (1947), stated that

if the Government, because of prior settlement of part of the granted lands by homesteaders, could not give possession to some of the lands granted to the railroad, it could select, under the direction of the Secretary of the Interior, other public lands in lieu of them as an indemnity. [Emphasis added.]

See 73 C.J.S. Public Lands § 159 (1951) (Indemnity or Lieu Lands). The case of Krug, however, involved an entirely different type of railroad land grant, i.e., where either place or indemnity lands had been settled after the original grant, the railroad was entitled to select other lands in lieu thereof when it relinquished title to the original lands. The question addressed in Krug was whether a release under section 321(b) of the Transportation Act of 1940, likewise, applied to extinguish claims to such lands under that right of selection. The court concluded that it did stating, "[W]e think Congress intended to bar any future claims by all accepting railroads which arose out of any or all of the land-grant acts, insofar as those claims arose from

originally granted, indemnity or lieu lands." (Emphasis added.) Krug v. Santa Fe Pacific Railroad, *supra* at 598. The court, thus, distinguished indemnity and lieu lands. Although the "lieu selection right" specifically listed in section 1 of the Recordation Act of 1955 applied to lieu lands (See Act of July 1, 1898, 30 Stat. 597), we do not believe that Congress intended to limit the effect of the Recordation Act to selection rights applicable solely to "lieu lands." As noted above, indemnity lands are similarly selected "in lieu of" originally granted lands. Krug v. Santa Fe Pacific Railroad, *supra* at 595. Also, the language of section 1 of the Act specifically excepts certain indemnity selection rights, *i.e.*, "the indemnity selection rights of any State, or the Territory of Alaska." A rule of statutory construction is that "exceptions make clear that statutes in which they appear should apply to all persons or situations not excepted." Section 47.11, 2A Sands, STATUTES AND STATUTORY CONSTRUCTION (4th ed. 1973). Accordingly, we find that section 1 of the Recordation Act of 1955 applies, by its terms, to all other indemnity selection rights.

The recordation of railroad indemnity selection rights clearly accords with the purpose behind enactment of the Recordation Act of 1955. That purpose was explained in a letter transmitting the proposed bill to the House of Representatives, dated January 18, 1955, from the Assistant Secretary of the Interior, which states:

This bill would enable the Department to ascertain all outstanding lieu selection or scrip rights, including bounty land warrants. An unknown amount of such rights and claims, which range from about a half to over a full century old, is in existence. \* \* \*

Once the amounts of the various scrips and rights which remain to be satisfied are definitely determined, the Department will be able to formulate a procedure for satisfying them. It is evident that virtually all of these old rights are now held by heirs and assignees of the persons to whom they were granted. While the rights have remained unused, almost all of the suitable lands have been taken up under various public-land laws. As time goes by, the lands which could be used to satisfy the rights continue to dwindle; and as memories and records fade, the possibility of accurate proof of the rights becomes more remote.

A reasonable statute of limitation on the exercise of these rights should be adopted and these old accounts should be closed. It can be accomplished, with fairness and efficiency, only after the extent of the claims are made known and definite. This essential first step would be taken by the enactment of the proposed bill.

H.R. REP. No. 749, 84th Cong., 1st Sess. 3 (1955).

Thus, it was to identify and to clear the public land records of stale claims that the Recordation Act of 1955 was adopted.

In its statement of reasons, appellant argues that the legislative history of the Recordation Act of 1955 indicates that a claim under the

Act of July 27, 1866, was not required to be recorded under the 1955 Act. Appellant relies on a memorandum, dated March 9, 1955 (Appellant's Exh. 9), in which the Lands Officer, Department of the Interior, stated that the House of Representatives' subcommittee, during the course of hearings, had requested a "list of all known scrip acts \* \* \* because Congressman Saylor attacked the 'open end' provision which did not specify all scrip acts affected. He did not feel it was sufficient notice to holders of scrip rights." In its letter transmitting the requested list, dated March 18, 1955, the Director, BLM, stated: "In its February 28 hearings on H.R. 2972, a bill to require the recordation of scrip, lieu selection, and similar rights, the Pfof subcommittee requested a list of the laws authorizing such rights. Enclosed is a list of such laws insofar as we have been able to identify them." The list was reproduced in the House of Representatives and the Senate reports which accompanied H.R. 2972, which subsequently became the Recordation Act of 1955. See S. REP. No. 880, 84th Cong., 1st Sess. 2, reprinted in 1955 U.S. CODE CONG. & AD. NEWS 2681, 2682; H.R. REP. No. 749, 84th Cong., 1st Sess. 2 (1955); appellant's exh. 7 and 8, respectively. There is no indication, however, in the legislative history that this "List of acts which authorized scrip or related rights" was intended to be all inclusive. In fact, the Act of July 1, 1898, 30 Stat. 597, specifically enumerated in section 1 of the Recordation Act of 1955 was not included in the Departmental list of affected Acts. Moreover, appellant has provided no evidence that Congress intended that only claims under those Acts listed would be subject to the recordation requirement. The House report noted that the list was included as part of the report "for information." H.R. REP. No. 749, 84th Cong., 1st Sess. 2 (1955). The list itself included the description of the various rights under the heading "Name of Scrip," with no mention of lieu selection rights. Plainly, the list was not inclusive of all affected rights. More importantly, section 1 of the Act broadly applied, as noted above, to "any lieu selection or scrip right \* \* \* under any Act of Congress not enumerated herein." (Emphasis added.)

In addition, appellant states that "review of the transcripts of the hearings held February 25, 1955; February 28, 1955; and June 1, 1955, further documents the fact that the Recordation Act of 1955 applies only to the scrip and lieu land selection rights listed by the Interior Department" (Statement of Reasons at 16). After carefully reviewing those transcripts, reflecting hearings before the House Subcommittee on Public Lands in connection with H.R. 2972, we disagree with appellant's conclusion. The hearings concentrated for the most part on scrip rights. See, e.g., Transcript of February 28, 1955, hearing at 31-32. However, certain statements by Congressman Udall at the February 25, 1955, hearing indicate, rather persuasively, that the Recordation Act was intended to apply to railroad indemnity selection rights. During a discussion of the purpose of the proposed Recordation Act, the following colloquy took place:

Mr. Saylor. Let me ask this, Mr. Hochmuth: Since 1946 when this legislation first came up, how many of the scrips or lieu selections or other rights have been presented to the Department?

Mr. Udall. I wonder if I might help him to answer the question. The reason I am concerned about the problem, I have a bill before the committee here which dramatizes the whole situation.

If the gentleman wants a reason for the situation, I suggest what happened out in our State gives the reason these gentlemen have in mind. I am referring to the Aztec land case, where scrip was issued to the Santa Fe Railroad for every off [odd] section probably over 70 or 80 years ago, which was never used. They were sleeping and someone forgot them. An enterprising young lawyer came along and found it, and they came in and asserted their rights, and as a result of winning a lawsuit they have gone right out in the middle of the national forest area and have selected extremely valuable lands in an area which for years and years has been administered by the Forest Service. It involves several townships of land and an enormous area of land.

It seems to me the principle of limitations and laches are deeply imbedded in our law. In other words, the whole philosophy and purpose in back of it is that people who rest on their rights should lose their rights eventually.

In the Aztec land case we have a bill here now trying to get an appropriation to get action to restore those lands to the forest and purchase them back because it has created a very serious situation in our national forests. That in itself shows there is the necessity. This is not any theory these gentlemen have. Am I not right?

Mr. Hochmuth. Yes \* \* \*.

(Transcript of February 25, 1955, hearing at 12-13).

The "Aztec case" cited by Congressman Udall is, of course, the case of Chapman v. Santa Fe Pacific Railroad, supra. 10/ That case, as noted above, involved identical railroad indemnity selection rights, under the Act of July 27, 1866, to those herein.

Accordingly, we hold that appellant's vested right to select indemnity land under the Act of July 27, 1866, was a claim which was required to be recorded under the Recordation Act.

In support of its contention that recordation was not required, appellant also argues that the list of innocent purchasers for value filed with the Department in conjunction with its section 321(b) Transportation Act release served to record its indemnity land claims. Appellant states that the Recordation Act only required recordation so as to determine outstanding scrip or lieu selection rights "whose recording has not been required by previous laws," quoting from H.R. REP. No. 749, 84th Cong., 1st Sess. 1 (1955). Appellant, however, has not directed our attention to any statute enacted prior to the Recordation Act of 1955, mandating the recordation of indemnity land claims arising under the Act of July 27, 1866. Thus, we must conclude

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10/ Although Congressman Udall used the word "scrip," he was obviously referring to indemnity selection rights under the Act of July 27, 1866.

that recordation under the 1955 Act was envisaged by Congress. We also conclude that the list of innocent purchasers for value filed in 1940 did not constitute compliance with the Recordation Act of 1955. The basis for this conclusion is that section 1 of the Recordation Act required recordation "within two years from the effective date of this Act." The purpose of the Act was to determine which claims were outstanding at that time. A filing in 1940, even if held to be sufficient as to form (see 43 CFR 2221.1-3(1969)), would not comply with the 1955 Act.

An analogous situation is presented by the enactment of section 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976). That section required, inter alia, owners of unpatented mining claims located prior to the date of approval of the Act to record their claims with BLM within 3 years of the date of passage of the Act. Section 314(c) of the Act, 43 U.S.C. § 1744(c)(1976), further provided that failure to record would conclusively constitute abandonment of the claim. The purpose of the recordation requirement was to alert BLM to the existence of claims on Federal lands. See S. REP. No. 583, 94th Cong. 64-66 (1975). The Federal recording requirement was not intended to supersede or displace any existing recording requirements under State law. Most importantly, however, recordation was required for all claims regardless of whether BLM had independent knowledge of their existence.

Thus, the fact that appellant had filed a list of innocent purchasers for value with the Department under section 321(b) of the Transportation Act did not excuse it from recording the claim under the 1955 Recordation Act. Recordation was a reasonable requirement which was meant to identify rights which remained unsettled. The Recordation Act placed the burden on the person asserting the right to come forward and identify it for the Department so that final resolution of those claims could take place. The failure to record timely results, by the terms of section 4 of the Recordation Act of 1955, in the claimant being barred from acquisition of the land. Accordingly, appellant's failure to record under the 1955 Recordation Act barred it from acquiring the land in question. 11/

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11/ We note that in December 1969 the real parties in interest in this case filed a cash election application (ES 6794) pursuant to the Act of Aug. 31, 1964, 78 Stat. 751, seeking approximately \$27,246,000 for 21,454 acres, including the acreage involved herein. That application was finally rejected in L. P. Perrin, Jr., discussed supra. In that case the appellants argued that the Recordation Act of 1955 "was designed to inform the Government of the number and nature of outstanding claims to railroad lieu selection rights and other such claims in order to permit both the congressional and administrative branches to deal intelligently with such claims and make some provision for their settlement" (Statement of Reasons dated Apr. 28, 1971, filed with the Board May 3, 1971). The appellants further asserted, however, that because a list of innocent purchasers for value had been filed with the Secretary of the Interior by Santa Fe in 1940, the Department had actual notice of the appellants' interest in the land.

Thus, it is arguable that the termination of the action instituted by the Perrins pursuant to the Act of Aug. 31, 1964, foreclosed any subsequent action seeking a land settlement since section 1 of that Act mandated that

We will briefly address one other issue. That issue is whether E. B., Lilo M., and Robert Perrin can be considered innocent purchasers for value. The savings clause of section 321(b) of the Transportation Act of 1940, supra, can be invoked only if the land in question was sold by the grantee railroad company, prior to September 18, 1940, to an innocent purchaser for value, i.e., one who purchases in good faith and for value. Laden v. Andrus, 595 F.2d 482 (9th Cir. 1979). In a memorandum, dated February 2, 1979, in support of its patent application, appellant stated at page 3 that

[b]etween January 1, 1886, and January 1, 1895, A&P entered into various contracts for the sale and conveyance to E. B. Perrin of approximately 250,000 acres of land within the indemnity limits of the 1866 Grant. By March 10, 1894, A&P had deeded to the Perrins approximately 230,000 acres in Coconino County, Arizona. On October 15, 1896, Santa Fe Pacific Railroad Company, A&P's successor, deeded to E. B. Perrin and Robert Perrin, the remaining 21,488 acres within Yavapai County, Arizona. Consideration for the deed was subsequently listed on Santa Fe's list of good faith purchasers \* \* \* as \$.75 per acre, or a total of \$15,018 \* \* \*. [Footnote omitted.]

Appellant also admitted that "there does not appear at this time any documentary evidence to demonstrate the actual receipt of the consideration." *Id.* at 13. However, appellant notes that the October 15, 1896, deed to the Perrins was made pursuant to settlement of a lawsuit growing out of the sale contracts. The deed states that the lawsuit was commenced in District Court for the Fourth Judicial District of the Territory of Arizona by the Atlantic and Pacific receiver, claiming that certain land had been inadvertently deeded to the Perrins. The deed further states that the Perrins in turn had claims against Atlantic and Pacific growing out of breaches of the sales contracts. Accordingly, the deed stated:

And whereas each and all of the parties hereto and desirous of compromising and forever settling their respective claims against

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fn. 11 (continued)

claims should become null and void at the termination of any transaction initiated pursuant to that Act. See note 7, supra. Appellant in this case asserts that the Perrins' cash election application should have been dismissed because:

"Furthermore, Departmental regulations require that the railroad company to which Congress granted land in aid of construction submit any and all patent applications for lands deeded by the railroad to innocent purchasers protected by the Transportation Act of 1940. 43 C.F.R. § 2630. Thus, ES 6794 was filed by the wrong party and was required to be dismissed for that reason as well." (Appellant's Statement of Reasons at 18, note 6). However, the specific regulation relating to cash election applications states that "a claimant" may elect to receive cash. 43 CFR 2221.2-3 (1969). A claimant was "any owner of, or any person claiming rights to," any rights recorded under the Recordation Act of 1955. See 43 CFR 2221.1-1(a) (1969).

each other, and have made and entered into an agreement whereby the same are compromised and forever satisfied and settled.

Now, therefore, know all men by these presents, that the said parties of the first part, in consideration of the several matters and things hereinbefore recited, and for the purpose of forever settling, satisfying, and adjusting all claims and demands heretofore existing between any of the parties hereto, do hereby grant, bargain, sell and convey unto the said E. B. Perrin and Robert Perrin all that real estate situated in the County of of Yavapai and Territory of Arizona, described as follows:

\* \* \* \* \*

The deed also stated that the Perrins conveyed to the Atlantic and Pacific receiver certain land inadvertently deeded to them. As a general rule, both the transfer of property and the compromise of disputed claims are considered to be good consideration. 17 C.J.S. Contracts §§ 76, 105 (1963). There is no evidence of lack of good faith on the part of E. B., Lilo, and Robert Perrin concerning their dealings with Atlantic and Pacific involving these lands. Thus, although it appears that the Perrins were innocent purchasers for value, in view of the fact that there was no timely recordation of the claim pursuant to the Recordation Act of 1955, we conclude that BLM properly rejected appellant's patent application.

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 as modified. 12/

Bruce R. Harris

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Administrative Judge

We concur:

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Douglas E. Henriques  
Administrative Judge

\_\_\_\_\_  
Will A. Irwin  
Administrative Judge.

12/ Since we are affirming the result of the Arizona State Office decision, i.e., rejection of the application, yet modifying the rationale for that result, the decision is affirmed as modified.

