

Appeal from decision of the California State Office, Bureau of Land Management, rejecting application for quitclaim deed or recordable disclaimer. CA 10198.

Affirmed.

1. Act of April 28, 1930--Act of July 6, 1960-- Conveyances:  
Generally--Lieu Selections

An application for a recordable disclaimer or quitclaim deed of the Government's interest in a parcel of land in the Sierra National Forest under sec. 6 of the Act of Apr. 28, 1930, which parcel was deeded to the Government in 1899 in contemplation of selecting another parcel in lieu thereof pursuant to the Act of June 4, 1897, is properly rejected even though the lieu selection never was consummated, because the Act of July 6, 1960, repealed the Department's authority to do so and provided that title to the lands was quieted to the United States as part of the national forest in which the lands are located.

2. Act of April 28, 1930--Act of July 6, 1960--Conveyances:  
Generally--Lieu Selections-- Statutory Construction: Legislative History

The legislative history of the Act of July 6, 1960, shows the Congress fully considered the constitutionality of the compensation provisions contained therein. The Department is bound to follow these provisions.

APPEARANCES: Frank C. Lerrigo, Esq., Fresno, California, for appellants.

## OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

O. J. Shaw, et al. (the Shaws), 1/ appeal the January 18, 1983, decision of the California State Office, Bureau of Land Management (BLM), rejecting their application for a quitclaim deed or recordable disclaimer. We affirm.

On April 17, 1981, the Shaws applied to the Office of the Secretary of the Interior for a quitclaim deed or disclaimer as to any right, title, or interest held by the United States in the W 1/2 NW 1/4 sec. 36, T. 10 S., R. 27 E., Mount Diablo meridian, in the Sierra National Forest, Fresno County, California, pursuant to the authority of section 6 of the Act of April 28, 1930, 46 Stat. 257. The application was forwarded to the California State Office, BLM, for processing and was received there on June 1, 1981.

The Shaws' interest in this parcel (the base lands) may be traced back to C. W. Clarke, who, on October 16, 1899, purchased it from the State of California. On November 8, 1899, Clarke deeded all of his interest in the parcel to the United States so that it could be included in the Sierra Forest Reservation. He made the transfer in anticipation of selecting another parcel in lieu of the base lands, pursuant to the Act of June 4, 1897, 30 Stat. 11, 36.

Clarke evidently made several lieu selection applications, all of which were rejected by the General Land Office (GLO) as faulty. 2/ The Shaws, by a succession of transfers, at unspecified dates, took whatever interest Clarke had in this parcel and subsequently filed their application for disclaimer under section 6 of the Act of April 28, 1930, in 1981.

On January 18, 1983, BLM rejected the Shaws' application, holding that title to the base lands was quieted to the United States under the Act of July 6, 1960, 74 Stat. 334 (the Sisk Act). BLM held that section 3 of this Act had removed the Department's authority to relinquish title to the lands and, implicitly, held that section 4 thereof had incorporated them into the Sierra National Forest in July 1961, upon the failure of any interested party to demand payment of compensation for the lands, as provided in section 1 of the Act. The Shaws (appellants) appealed.

[1] BLM correctly held that it was barred by the Sisk Act from issuing a disclaimer of the Government's interest in the base lands under section 6 of the Act of April 28, 1930, supra. In Soda Flat Co., 75 IBLA 388 (1983); Masonic Homes of California, 70 IBLA 46 (1983), and Masonic Homes of California (Masonic I), 4 IBLA 23, 78 I.D. 312 (1971), we held that the

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1/ O. J. Shaw, Haroldine L. Shaw, Richard A. Shaw, and O. J. Shaw, Jr., have appealed.

2/ According to the Shaws, Clarke never used the SW 1/4 NW 1/4 sec. 36, as base lands for any lieu selection. However, he apparently did make several timely applications using portions of the NW 1/4 NW 1/4 sec. 36, as base lands, all of which were rejected because the acreage offered was less than a legal subdivision and therefore not acceptable for lieu selection purposes.

Sisk Act repealed any authority for the Department to reconvey any interests held by the United States on account of any deed issued to it pursuant to the Act of June 4, 1897, supra, in contemplation of receipt of a lieu selection, even though the selection was never completed. Section 3 of the Sisk Act expressly provides that no reconveyance can be made under section 6 of the Act of April 28, 1930, supra, of any lands relinquished or conveyed to the United States as a basis for a lieu selection after July 6, 1960, the effective date of the Sisk Act.

The reasons for the decision by Congress in 1960 to terminate the rights of holders of interests in parcels deeded to the United States under the Act of June 4, 1897, supra, are set out fully in S. Rep. No. 1639, 86th Cong., 2d Sess. reprinted in 1960 U.S. Code Cong. & Ad. News 2743-55, in connection with H.R. 9142, which culminated in the Sisk Act. The legislative history fully discusses the background to the problem of incomplete lieu selections:

The 1897 act provided that--

in cases in which a tract covered by an unperfected bona fide claim or by a patent is included within the limits of a public forest reservation, the settler or owner thereof may, if he desires to do so, relinquish the tract to the Government, and may select in lieu thereof a tract of vacant land open to settlement not exceeding in area the tract covered by his claim or patent \* \* \*.

This act \* \* \* was repealed by the act of March 3, 1905 (33 Stat. 1264). The last-named act saved, however--

the validity of contracts entered into by the Secretary of the Interior prior to the passage of this Act.

and provided, further, that--

selections heretofore made in lieu of lands relinquished to the United States may be perfected and patents issue therefor the same as though this Act had not been passed, and if for any reason not the fault of the party making the same any pending selection is held invalid another selection for a like quantity of land may be made in lieu thereof.

Id. at 2744-45. Thus, the repeal of the 1897 Lieu Selection Act in 1905 preserved the right to make lieu selections where a party had relinquished title to base lands, but did not provide for the reconveyance of the base lands to the party.

The legislative history continues:

None of these acts contained any provision for reconveyance of the relinquished lands and the 1905 act, as is evident,

treated the conveyor's rights as contractual rather than proprietary in nature. It was not until the act of September 22, 1922 (42 Stat. 1017), became law that there was authority for the Secretary of the Interior to make a reconveyance \* \* \*. [Emphasis supplied.]

Id. at 2745. The authority to grant reconveyances contained in the Act of September 22, 1922, expired on September 22, 1927, but section 6 of the Act of April 28, 1930, supra, subsequently renewed the Department's authority:

Where a conveyance of land has been made \* \* \* to the United States in connection with an application for \* \* \* an exchange of lands \* \* \*, and the application in connection with which the conveyance was made is thereafter withdrawn or rejected, the Commissioner of the General Land Office [now the Bureau of Land Management] is hereby authorized and directed, if the deed of conveyance has been recorded, to execute a quitclaim deed of the conveyed property to the party or parties entitled thereto.

These are the precise circumstances presented by the Shaws' appeal.

The legislative history leaves no doubt that Congress intended in 1960 by the Sisk Act to repeal the Act of April 30, 1930, and so to strip the Department of any authority to reconvey base lands in these circumstances:

PURPOSE

The principal purposes of H.R. 9142 are (1) to provide compensation for land conveyed or relinquished to the United States during the years 1897-1905 under the act of June 4, 1897 (30 Stat. 11, 36), in cases in which the lieu lands or other rights which the owners were entitled to receive under this 1897 act and supplementary legislation have not already been given them; (2) to make inapplicable to the owners, their heirs and assigns a later provision of law [sec. 6 of the Act of April 28, 1930] directing the Secretary of the Interior, upon request, to return the original lands; and (3) thus to correct defects in the law under which such parties are now laying claim to valuable lands within the national forests and parks and taking them out of Federal ownership.

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In view of the earlier legislation, the 1922 and 1930 acts must, at least so far as reconveyances are concerned, be regarded as acts of grace on the part of Congress which vested no permanent or irrevocable right to a reconveyance in their beneficiaries. Enactment of H.R. 9142 will thus, in effect, restore the legal situation to what it was before these acts became law except as to lands which have been returned to private ownership in the meantime. [Emphasis supplied.]

S. Rep. No. 1639, supra at 2743-45. In 1960, prior to the passage of the Sisk Act, the Acting Secretary of the Interior reported to Congress his understanding that "H.R. 9142 would repeal the 1922 act and direct that there be no more reconveyances under section 6 of the 1930 act." (Emphasis supplied.) Letter from Acting Secretary Ernst to Hon. Wayne Aspinall (Jan. 27, 1960), reprinted in 1960 U.S. Code Cong. & Ad. News 2751; accord, Udall v. Battle Mountain Co., 385 F.2d 90, 96 (9th Cir. 1967), cert. denied, 390 U.S. 957 (1968).

Thus, the Sisk Act repealed the Department's authority to grant the Shaws a quitclaim deed or recordable disclaimer.

[2] It is clear that the Sisk Act was intended to provide a final 1-year opportunity to compensate persons claiming interests in base lands for which no lieu selections were completed, and that, after the opportunity expired, any unexercised rights would be cut off. As the Acting Secretary noted in 1960:

Fifty-four years have now passed since the last lands were relinquished under the 1897 act. The majority of the lands relinquished under that act have formed the basis for completed lieu selections. Some lieu selections, however, were not filed or for some reason were not carried to completion, but, nevertheless, the deeds conveying the private lands to the Government were executed and placed on the records. Some of the grantors took advantage of the 1922 act but others did not, and as a result there are scattered through the national forests in the Western States tracts of land to which the United States holds record title by reason of the old conveyances but for which parties may yet apply for reconveyance under the 1930 act. Some of these lands are now included in national parks which were created out of national forests. Some of these lands are of vital importance in the management of the national forests and the national parks. It is certainly true that parties with a right to demand a reconveyance of land have had a great deal of time in which to make application, more than 29 years by now since the last statute was passed. It would seem just and proper, therefore, that the essential interests of the Federal Government be protected by depriving parties of a further right to demand reconveyance. In this manner H.R. 9142 partakes of the nature of a statute of limitations, cutting off unexercised rights, but allowing an additional year within which compensation for those rights may be obtained. [Emphasis supplied.]

Letter from Ernst to Aspinall, supra at 2751. When appellants or their predecessor in interest failed to exercise their right to compensation on or before July 6, 1961, any existing rights in the base lands were cut off.

Appellants argue that BLM's denial of their request for a recordable disclaimer has the effect of depriving them of their property without just compensation. Congress expressly provided the mechanism for compensating

those who were precluded from completing their lieu selections in section 1 of the Sisk Act. The legislative history of the Sisk Act shows that Congress and the Department of Justice fully considered the constitutionality of this procedure. See *Masonic I*, supra at 27, 28. We are bound to follow it.

BLM's implicit holding that title to these base lands was "quieted to the United States" under the Sisk Act is also supported by the legislative history and the terms of the Act itself. In 1960, the Acting Secretary of Agriculture expressed his wish that

title to these lands should be confirmed to the United States, with provision for such compensation to the grantors or their successors in interest as Congress finds equitable. We recommend that a provision be added to the bill to specify that the lands shall be part of the national forests \* \* \* within which they are located.

[Emphasis supplied.]

Letter from Acting Secretary True D. Morse to Hon. Wayne Aspinall (Oct. 14, 1959) reprinted in 1960 U.S. Code Cong. & Ad. News 2749. Section 4 of the Sisk Act expressly provides that, upon failure of the owners to make demand for reimbursement within 1 year from July 6, 1960, the base lands "shall \* \* \* be a part of the national forest \* \* \* within the boundaries of which it is embraced [and] shall be administered as a part thereof." No timely demand for payment having been made, these lands became part of the Sierra National Forest, within whose boundaries they are situated.

The position of the Department of the Interior in this matter has also been advanced by the Department of Agriculture, which supervises the surface of these lands as part of the Sierra National Forest. On June 24, 1981, John R. Block, Secretary of Agriculture noted in part as follows in a letter to Honorable Charles Pashayan, Jr., U.S. House of Representatives:

Mr. Clarke, or his heirs, had opportunities, in law, for more than 35 years to regain the land under the Acts of September 22, 1922 (42 Stat. 1017; 16 U.S.C. 483), and April 28, 1930 (46 Stat. 257; 43 U.S.C. 872), but failed to take advantage of them. Also, he failed to record his lieu rights under the Script Recordation Act of August 5, 1955 (69 Stat. 534).

The Act of July 6, 1960 (74 Stat. 334), confirmed title in the United States. Particularly in this instance, this is appropriate considering that the parcel has been administered as National Forest System land for more than 75 years. It was never on the tax rolls until March 1969.

Appellants stress that GLO ruled that Clarke was "at fault" in his failure to consummate the lieu selection and argue that this fact removes them from the operation of the Sisk Act. A review of the history of the relevant legislation shows otherwise.

As discussed above, the Act of June 4, 1897, *supra*, allowed owners of lands within public forest reservations to relinquish these lands to the

United States and to select a different tract of Federal lands of the same size in an area open to settlement in lieu of them. The Act of March 3, 1905, ended the Department's authority to grant these lieu selections, except where a pending selection had been held invalid for reasons not the fault of the selecting party. Whether Clarke was "at fault" between 1899 and 1900 is thus relevant only to whether his lieu selection application survived the repeal of the Act of March 3, 1905. (Since he was at fault, his right to a lieu selection was ended by the 1905 Act.) Whether he was "at fault" is irrelevant to whether later legislation gives his successors the present right to a reconveyance of the base parcel. The Act of April 28, 1930, conferred authority to grant reconveyances in all situations where lieu selection applications were rejected, regardless of whether the rejection was the applicant's fault. In turn, the legislative history of the Sisk Act leaves no doubt that Congress intended by its passage to terminate any claims covered by the 1930 Act, including the claim of Clarke's successors, and to quiet title to such lands to the United States.

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.

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Douglas E. Henriques  
Administrative Judge

We concur:

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Bruce R. Harris  
Administrative Judge

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Will A. Irwin  
Administrative Judge

