

Appeal from decision of California State Office, Bureau of Land Management, rejecting application for quitclaim deed. CA 3770.

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 for 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 issuing a quitclaim deed under the 1930 Act.

APPEARANCES: Donald H. Coulter, Esq., Grants Pass, Oregon, for appellant.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

B. K. Herndon appeals the February 9, 1983, decision of the California State Office, Bureau of Land Management (BLM), rejecting his application for quitclaim deed made pursuant to section 7 of the Act of April 28, 1930, 46 Stat. 257. The land for which application was made is described as the NW 1/4 of the SE 1/4, T. 5 S., R. 30 E., Mount Diablo meridian, Mono County, California. Appellant is the successor in interest to J. C. Irwin, who deeded the land to the United States on January 22, 1901, pursuant to provision of the Forest Exchange Act of June 4, 1897, 30 Stat. 11, 36, as the basis for a forest lieu selection (base parcel) of other lands in Nevada. The forest lieu selection was never completed. BLM explains its decision to reject appellant's application for a quitclaim deed to the base parcel at page 2 of the February 9 BLM decision:

Although the land was never accepted under the forest lieu selection, title was subsequently quieted to the United States under the Act of July 6, 1960; (74 Stat. 334 (Sisk Act)). The claimants failed to seek relief under either the Act of September 22, 1922, or Section 6 of the Act of April 28, 1930, prior to passage of the Sisk Act.

Appellant makes seven specifications of error on appeal from this decision. The first two specifications directly challenge the constitutionality of the Sisk Act. Since the Department is not the proper forum in which to raise the question of the constitutionality of statutes of the United States, the first two issues raised by appellant cannot be addressed in this decision. See, e.g., David and Roirdon Doremus, 61 IBLA 367 (1982). Less directly, appellant contends the Sisk Act was ineffective to quiet title to base parcel lands such as those sought by appellant because determinations of title to real property are the sole province of the judicial branch. This argument is also based upon constitutional analysis. Similarly, the Board is without authority to consider the argument that a statute which it is required to enforce is inoperative because Congress exceeded its authority when enacting the law. David and Roirdon Doremus, supra.

Appellant's remaining arguments are: The Sisk Act does not apply to base parcel lands (the relinquished lands, as distinguished from the lands selected by appellant's predecessor to be acquired by exchange); the Department lacks title to the land because it rejected the conveyance of the base parcel when it rejected the lieu selection exchange; the Sisk Act did not operate to quiet title to the base parcel in this case because the land was excluded from the national forest system; and the Department may not claim title to the base lands in issue because prior policy announced in statutes authorizing forest lieu selections and providing for return of base lands should prevent the operation of the Sisk Act. In his brief, appellant seeks to distinguish prior decisions of the Department from the case on appeal, especially Masonic Homes of California, 70 IBLA 46 (1983); and Masonic Homes of California, 4 IBLA 24 (1971). He rejects also, as dicta, the application to this case of the opinion in Udall v. Battle Mountain Co., 385 F.2d 90 (9th Cir. 1967), cert. denied, 390 U.S. 957 (1968).

The history of legislation concerning the forest lieu lands selection process as it developed in the time between the Sisk Act and the 1897 Act which created the procedure is summarized in Estate of John C. Brinton, 25 IBLA 283, 285 n.1 (1976):

The Act of March 3, 1905, ch. 1495, 33 Stat. 1264, repealed the statute authorizing relinquishment of land in forests and the selection of other land. The Act of September 22, 1922, ch. 404, 42 Stat. 1017, provided that those who had relinquished land but had not succeeded in selecting other land prior to the Act of March 3, 1905, could select other land or timber, or if no satisfactory exchange could be agreed upon, the title could be quitclaimed to those who had relinquished the land or their heirs or assigns. The Act of August 5, 1955, ch. 575, 69 Stat. 534, required anyone claiming a lieu selection right to present his holdings or claim for recordation by the Department within 2 years. This legislation is explained and summarized in Udall v. Battle Mountain Co., 385 F.2d 90, 92-93 (9th Cir. 1967), cert. denied, 390 U.S. 957 (1968).

The first Masonic Homes case, Masonic Homes of California, 4 IBLA 24 (1971), considers in detail both the 1897 Act and the Sisk Act. Contrary to appellant's contention, the Masonic Homes decisions are directly in point here, and are dispositive precedent. Those decisions hold that the Sisk Act removed Departmental authority to issue quitclaim deeds of base parcels offered in connection with forest lieu selections which had not been consummated.

The first Masonic Homes decision also considered and rejected arguments similar to those advanced by appellant. Thus, the opinion observes:

With respect to appellant's contention that the denial of his application would place the United States in the position of taking private land without compensation, that report [the Senate report of the Sisk Act] shows that Congress considered that problem as follows:

It seems proper, therefore, that provision be made, as proposed in H.R. 9142, for payment to those who are precluded from exercising their original lieu selection rights, since it was never intended that the conveyed or relinquished lands should be a donation to the Government. The price to be paid (\$1.25 per acre) was the going price of public lands generally at the time the base lands were relinquished. The interest payment proposed in the bill, as amended, commends itself to the committee as being reasonable and fair both to the original owner and to the Government.

The committee also recognizes that it has been held in some judicial decisions that until there had been an acceptance of the base lands by the Secretary of the Interior no rights accrued under the 1897 act. (For examples see Roughton v. Knight, 219 U.S. 537, 547 (1911); Daniels v. Wagner, 205 Fed. 235 (C.C.A. 9th, 1913).) Understandable as this position was, as of the time and in the light of the circumstances in which it was taken, the committee does not understand or believe that after a lapse of 60 years during which the Forest Service, the National Park Service, and other Governmental agencies have administered these lands and Congress has appropriated funds for their management, improvement, and protection, there can any longer be doubt that they have been, in law as in fact, fully accepted by the Government \* \* \*.

4 IBLA at 27. Appellant's contentions that the Department lacks title to the base lands at issue, and that the Sisk Act has no application to the lands at issue in this appeal because the base lands were never accepted by the Department must be rejected, therefore.

Appellant also states that exclusion of the base parcel here from the national forest precludes the operation of the Sisk Act in this instance.

This ignores the plain language of the Act to the contrary. The Act provides at section 4:

Any land for which the United States makes payment under section 1 of this Act, or any land for which it might make payment thereunder upon application by the proper party, but for which no demand is made, shall (unless it has heretofore been disposed of by the United States) be a part of the national forest, national park, or other area within the boundaries of which it is embraced, shall be administered as apart thereof, and shall be subject to the laws, rules, and regulations applicable to land set apart and reserved from the public domain in that national forest, national park, or other area. [Emphasis supplied.]

There is no question but that the land is now, and has been, administered as public land by the Department. This contention must also be rejected.

Finally, appellant's assertion that Congress lacked the authority to withdraw from this Department the previously conferred authority to execute quitclaim deeds to base parcel claimants, was directly disposed of by the first Masonic Homes decision. Citing Article IV, Section 3, Clause 2, of the United States Constitution, and Gibson v. Chouteau, 80 U.S. 92 (1872), the Board, observed that Congress undoubtedly had the power to enact the Sisk Act, and concluded: "Whether the Act of 1960, supra, is a proper exercise of this power is not within the scope of our consideration." Masonic Homes, supra at 30. The Board adheres to its prior decisions, and holds the Department lacks the authority to grant appellant the relief sought.

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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Franklin D. Arness  
Administrative Judge  
Alternate Member

We concur:

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Edward W. Stuebing  
Administrative Judge

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James L. Burski  
Administrative Judge

