

ANDY D. RUTLEDGE ET AL.

IBLA 83-595

Decided July 17, 1984

Appeal from decision of the California State Office, Bureau of Land Management, rejecting application for quitclaim deed or recordable disclaimer. CA 4309.

Affirmed.

1. Act of July 6, 1960 -- Administrative Authority: Generally -- Board of Land Appeals -- Constitutional Law: Generally

While it is within the province of the judicial branch to adjudicate the constitutionality of statutes, it is outside the jurisdiction of the Board. The legislative history of the Act of July 6, 1960, shows Congress fully considered the constitutionality of the compensation provisions therein. The Department is bound to follow those provisions.

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

Legislative history of the Act of July 6, 1960, clearly shows that Congress concluded that the Federal Government holds title to land relinquished to the Federal Government in anticipation of a forest lieu exchange, notwithstanding the failure to consummate the exchange.

3. Act of June 4, 1897 -- Act of July 6, 1960 -- Act of October 21, 1976 -- Conveyances: Generally -- Lieu Selections

An application for a recordable disclaimer of the Government's interest in a parcel of land in the Inyo National Forest pursuant to sec. 315 of the Act of Oct. 21, 1976, 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 was never consummated, because the Act of July 6, 1960, quieted title to such land to the United States as part of the national forest in which the lands are located.

APPEARANCES: Bennett Siemon, Esq., Bakersfield, California for appellants.  
 OPINION BY ADMINISTRATIVE JUDGE STUEBING

Andy D. Rutledge, et al. 1/ appeal the May 17, 1983, decision of the California State Office, Bureau of Land Management (BLM), rejecting their application for a recordable disclaimer (quitclaim deed) from the Secretary of the Interior. 2/ The land covered in the application is the N 1/2 SE 1/4 sec. 36, T. 17 S., R. 34 E., Mount Diablo meridian, Tulare County, California.

In 1899, Peter M. Collins, the appellants' predecessor in interest, relinquished by deed the described property which was located within the Sierra Forest Reserve (presently the Inyo National Forest) to the United States Government. 3/ The relinquishment was filed pursuant to the Forest Exchange Act of June 4, 1897, ch. 2, 30 Stat. 11, 36, wherein owners of land (base land) within the boundaries of national forests were given the right to select in lieu property outside the forests after relinquishing the base land to the Federal Government.

Collins' application in 1900 for land outside the Sierra Forest Reserve was rejected because the forest lieu selection property had been previously patented to the Northern Pacific Railway Company. Although the Commissioner of the General Land Office authorized Collins or his successors to make a second selection, there is no evidence of such a subsequent selection. Nor is there any indication that the forest lieu claim was recorded under the provisions of the Act of August 5, 1955, 69 Stat. 534.

Appellants, as successors in interest to Peter M. Collins, filed application CA 4309 in April 1977 for a recordable disclaimer pursuant to section

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1/ The other appellants are Elizabeth Y. Rutledge, Randy Rutledge, Armand H. Anderson, and Jean Anderson.

2/ Section 315 of the Federal Land Policy and Management Act provides that such disclaimer shall have the same effect as a quitclaim deed from the United States. 43 U.S.C. § 1745(c) (1982).

3/ While in light of our disposition we need not decide this question, we must point out that substantial doubts exist as to whether appellants' original predecessors in interest, F. A. Hyde and Peter M. Collins, were in any position to exercise forest lieu rights. F. A. Hyde was the perpetrator of a massive land fraud against the United States and various states which resulted in numerous criminal judgments against him. See generally State of Oregon, I, 78 IBLA 255, 91 I.D. 14 (1984). The good faith of Peter M. Collins was itself adjudicated in a decision styled Peter M. Collins, 49 L.D. 495 (1915), in which it was found that he had failed to establish bona fides in his dealings with Hyde.

315 of the Federal Land Policy and Management Act of October 21, 1976 (FLPMA), 43 U.S.C. § 1745 (1982). BLM rejected the application for a Federal disclaimer on the grounds that claimants failed to seek relief pursuant to the Act of September 22, 1922, or section 6 of the Act of April 28, 1930, prior to the Act of July 6, 1960 (Sisk Act), P.L. 86-596, 74 Stat. 334 (1960), and that in 1960 title to the base lands was quieted to the United States pursuant to the Sisk Act.

Appellants argue that the relinquishment deed from Collins to the United States in 1899 did not vest title to the base lands in the United States. Nor, argue appellants, was title forfeited by their failure to apply for relief under the Act of September 22, 1922, or the Act of April 28, 1930. They concede that title lay with the Federal Government if title passed pursuant to the Sisk Act. Appellants state that title did not pass under the Sisk Act, however, because, they contend, the Act is unconstitutional. Therefore, appellants conclude that their request for a recordable disclaimer should be granted.

Appellants challenge the constitutionality of the Sisk Act on several grounds. First, appellants argue that the Sisk Act constitutes a taking without just compensation, thus violating the Fifth Amendment. Second, appellants argue that "quieting title" is inherently a judicial function, not a legislative function. Therefore, the Sisk Act, which quiets title in the name of the Federal Government, violates the separation of powers doctrine of constitutional law. Finally, appellants argue that determination of just compensation, pursuant to the Fifth Amendment, is a judicial function, not a legislative function.

[1] While it is within the province of the judicial branch to adjudicate the constitutionality of statutes, it is outside the jurisdiction of this Board. B. K. Herndon, 76 IBLA 353 (1983); James D. Ross, 72 IBLA 395 (1983). Therefore, the Board must decline to review appellants' challenge to the constitutionality of the Sisk Act. Until such time as the Act is declared unconstitutional by a court of competent jurisdiction, the Board is bound to follow its provisions. O. J. Shaw, 75 IBLA 396 (1983); Soda Flat Co., 75 IBLA 388 (1983); Masonic Homes of California (Masonic II), 70 IBLA 46 (1983). The legislative history of the Sisk Act shows that Congress and the Department of Justice fully considered the constitutionality of the compensation provision of the Sisk Act. O. J. Shaw, supra.

The Sisk Act was intended to provide a final 1-year opportunity to compensate persons claiming an interest in relinquished base lands for which no lieu selections had been completed, and who had not recorded their claim under the 1955 Scrip Recordation Act, 69 Stat. 534. 4/ After that opportunity,

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4/ The right of selection of those who had recorded their forest lieu claims under the 1955 Act was terminated by the Act of Aug. 31, 1964, 78 Stat. 751, which provided for either the conveyance of land or a cash election to satisfy such claims. See generally State of Oregon, I, supra at 278-84, 91 I.D. at 27-30.

any unexercised rights were terminated. O. J. Shaw, supra; Soda Flat Co., supra. Within the scope of the 1960 Sisk Act is:

[T]he claim of any person who relinquished or conveyed lands to the United States as a basis for a lieu selection in accordance with the provisions of the fifteenth paragraph under the heading "Surveying the Public Lands," in the Act of June 4, 1897 (30 Stat. 11, 36), as amended \* \* \* and who has not heretofore received his lieu selection, a reconveyance of his lands \* \* \*.

Section 1, Act of July 6, 1960, 74 Stat. 334.

[2] The legislative history of the Sisk Act demonstrates that Congress has concluded that such relinquished land is vested in the Federal Government, notwithstanding the failure of the parties to consummate the forest lieu exchange. The Committee on Interior and Insular Affairs stated that the relinquished lands were "in law as in fact, fully accepted by the Government and that the former owner's claims to continued ownership are without merit or equity." S. Rep. No. 1639, 86 Cong., 2d Sess. 4 (1960).

Pursuant to the Sisk Act, the relinquished base parcel conveyed to the United States Government by appellants' predecessor in interest is national forest land. The Act provides:

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 a part 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.

(Section 4 of the Act of July 6, 1960), 74 Stat. 335. Thus, by Congressional declaration, relinquished property such as the subject land is United States property.

[3] Appellants petitioned BLM for a disclaimer of the United States interest in the relinquished property pursuant to section 315 of FLPMA, 43 U.S.C. § 1745 (1976). The Secretary may issue a disclaimer of any lands where "the disclaimer will help remove a cloud on the title of such lands and where he determines a record interest of the United States in lands has terminated by operation of law, or is otherwise invalid \* \* \*." Section 315 of FLPMA, supra. This Board has concluded that title to the lands in question vested in the United States. Therefore, BLM properly denied appellants' application for a recordable disclaimer.

The Board notes that prior to 1960, appellants may have petitioned BLM for a quitclaim pursuant to section 6 of the Act of April 28, 1930. However, section 3 of the 1960 Sisk Act expressly stripped BLM of that authority. O. J. Shaw, supra; Soda Flat Co., supra; Masonic Homes of California, supra;

Masonic Homes of California (Masonic I), 4 IBLA 23, 78 I.D. 312 (1971). Section 3 provides, "No reconveyance of lands to which Section 1 of this Act applies shall hereafter be made under section 6 of the Act of April 28, 1930." (Citations omitted.) Issuance of a recordable disclaimer which is the legal equivalent of quitclaim would constitute a "reconveyance" in contravention of the spirit and intent of this provision.

The historical background of the 1960 Sisk Act and the section 6 quitclaim pursuant to the 1930 Act was outlined by the Ninth Circuit Court of Appeals in Udall v. Battle Mountain Co., 385 F.2d 90, 96-97 (9th Cir. 1967), cert. denied, 390 U.S. 957 (1968): 5/

Legislative history shows clearly what Congress had in mind in 1960. It was concerned over the fact that public lands of the United States were being reconveyed under the 1930 Act (the successor of the 1922 Act) in "what the public press, conservation interests and others regard as being virtually a 'give-away' of public resources approaching a scandal." S. Rep. No. 1639, 86th Cong., 2d Sess. (1960). The 1960 Act repealed the provision permitting reconveyance. Instead, claimants were to be compensated at \$1.25 an acre. \* \* \* Further the legislative history shows that the extent of recordation under the 1955 Act was carefully analyzed in order that the cost of such compensation might be anticipated.

Congress, then, was in 1960 retiring unexercised lieu selection rights for money. It was not dealing with public land. On a money basis, where land transfer was not involved and where the cost was predictable, it was willing to accept the consequences of recognizing the validity of assignments. We do not find in this manner of closing the book on forest lieu selection rights and meeting its outstanding land obligations anything inconsistent with the prior departmental construction of the Act of 1897.

We conclude that the departmental construction of the Act of 1897 is entitled to judicial recognition.

Appellants petition the Board for a hearing pursuant to 43 CFR 4.415. A hearing before an Administrative Law Judge is necessary only where there is a material issue of fact requiring resolution through the introduction of testimony and other evidence. In the absence of such an issue, no hearing is

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5/ The Board recognizes that Udall v. Battle Mountain Co. concerned different facts and issues than those presented here, and is not a case directly in point. However, as a judicial analysis of the Sisk Act and its legislative history, we find it to be cogent to our resolution of this appeal, particularly the Court's finding that Congress, in enacting the Sisk Act intended to provide a "manner of closing the book on forest lieu selection rights," and its finding that in so doing, the Congress was not dealing with public land, but was providing money compensation for the termination of rights which had not been exercised.

required. Alumina Development Corp. of Utah, 77 IBLA 366 (1983). The Board denies appellants' request for a hearing because there are no material issues of fact requiring resolution.

The Board concludes that title to the property which is the subject of this appeal is in the United States and BLM properly denied appellants' application for recordable disclaimer.

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

We concur:

C. Randall Grant, Jr.  
Administrative Judge

James L. Burski  
Administrative Judge.

