

Lands—Reclamation Service, Reconveyance To — Land Board, Authority Of.

Where lands are within the limits of a reclamation withdrawal, the land board has authority by virtue of Section 34 of Chapter 147, Laws of 1909, to exchange them for other lands, but if without such withdrawal, only legislative authority will sanction their exchange.

February 11th, 1920.

Hon. Sidney Miller,
Register of State Lands.

Dear Sir:

You have submitted to me the letters and files in connection with the proposal of the United States Reclamation Service to accept from the State of Montana a re-conveyance of state lands subject to assessments (heretofore granted) located within the Muddy Creek Reservoir site, Sun River project, and the Nelson Reservoir site, Milk River project. The minutes of the State Board of Land Commissioners as shown at their meeting of September 6th, 1919, are as follows:

“The Board had under consideration the communication from the U. S. Reclamation Service in connection with a copy of the Act of Congress authorizing an exchange of lands by the State of Montana in connection with the Muddy Creek Reservoir site, Sun River project, and Nelson Reservoir site, Milk River project. After fully considering the matter, the Board decided to make the required relinquishments and selections, provided the Reclamation Service, at its expense, will arrange to clear the lands relinquished of any encumbrances in the shape of rights of way which have been granted by the state, so that eventually the Department of the Interior will accept the exchanges for the full areas originally granted to the state.”

The letter from Mr. Willis J. Eggleston, District Counsel for the United States Reclamation Service, of October 24th, 1919, which accompanies the files indicates the willingness to accept a re-conveyance of the state lands subject to the rights of way. Also a copy of the Act of Congress approved February 28th, 1919, which is in part as follows:

“An Act to authorize an exchange of lands, with the State of Montana, in connection with Muddy Creek Reservoir site, Sun River project, and Nelson Reservoir site, Milk River project, and for other purposes.

“Be It Enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That upon receipt of proper deeds from the State Board of Land Commissioners of the State of Montana, executed under the authority of its Legislative Assembly, reconveying to the United States of America title to (here follows a description of the land), the

Secretary of the Interior is authorized to issue patents to said state for such vacant, surveyed, unreserved, unoccupied, non-mineral public lands as may be selected by said State within its boundaries, not exceeding the amount of land included in said deeds."

The lands described in this Act are 640 acres in the Common School Grant, 1120 acres in the Agricultural College Morrell Grant, and 1042.28 acres in the Normal School Grant.

You have directed my attention to the following provision contained in the Act of Congress above referred to, which is repeated in the letter of the Commissioner of the General Land Office, and is as follows: "Executed under authority of the Legislative Assembly," and you have asked the question whether compliance with the above quoted clause requires a special act of the legislature, or is there present legislative authority to warrant the Board of Land Commissioners in making conveyance of these lands, providing other conditions were favorable to the immediate consummation of the exchange.

These lands were granted to the state by the United States, and one of the conditions attached was that they should be sold only at public sale and at a price of not less than \$10.00 per acre. See Sections 11 and 14 of the Enabling Act. Section 1 of Article 17 of the State Constitution provides insofar as it relates here, as follows:

"Nor shall any lands which the state holds by grant from the United States (in any case in which the manner of disposal and minimum price of which were prescribed) be disposed of except in the manner and for at least the price prescribed in the grant thereof without the consent of the United States."

The Act of Congress above referred to is clearly a waiver by the United States of the provisions of the Enabling Act relating to sale of these particular lands. That is, in place of being required to be sold at not less than \$10.00 per acre, they may be exchanged for other lands as prescribed in the Act, so far as the United States is concerned.

Is there then legislative authority authorizing such exchange? The legislative authority, if it exists, is contained in Chapter 147, of the Session Laws of the Eleventh Legislative Assembly, and in Sections 31 and 34 thereof. Section 31 provides as follows:

"Any land now or hereafter owned by the State of Montana and needed by the United States in its irrigation and reclamation work, shall, upon application made therefor to the State Board of Land Commissioners, be conveyed to the United States, at the minimum price of ten (10) dollars per acre; and there is hereby granted to the United States over all the lands now owned, or hereafter acquired by the State of Montana, a right-of-way for ditches, canals, tunnels, telephone and telegraph lines, now constructed, or to be constructed by the United States Government, in furtherance of the reclamation of the arid lands, and that all conveyances of state lands shall contain a reservation of such right-of-way."

Section 33 of this chapter provides for easements or rights of way across or upon state lands for a ditch, reservoir, railroad, private road, telegraph or telephone line, or for any other public use as defined in the Code of Civil Procedure upon such terms as may be agreed upon, providing that the lands shall revert to the state whenever they cease to be used for the purpose for which granted.

Section 34 provides:

“The State Board of Land Commissioners may direct the sale of any state lands, except as provided in this Act * * *, provided, that the State Board of Land Commissioners may sell to the United States, at the minimum price of \$10.00 per acre, any state lands within the limits of a withdrawal of lands by the United States for reclamation purposes; *or may exchange the same for other lands of the United States, upon such terms as it may deem for the best interests of the state.*”

This provision would, in my opinion, clearly cover such lands as are within the limits of a withdrawal, and give to the land board the authority to exchange them for other lands as provided in the Act of Congress above referred to. If the lands are not within the limits of a withdrawal they would come within the provisions of Section 31, and could only be disposed of by sale at the minimum price, and that case would require an additional legislation of the state. By referring to the plat showing the withdrawal it can be determined whether the lands are within or without the project.

Respectfully,

S. C. FORD,

Attorney General.