

§ 2623.1

143), as amended by the Act of August 24, 1912 (37 Stat. 497; 43 U.S.C. 142), and all forms of Executive withdrawal recognized and construed by the Department of the Interior as reservations, existent prior to January 25, 1927.

§ 2623.1 Effective date of grant.

Grants to the States of school lands in place (the numbered sections), of the character and status subject thereto, as a rule, are effective and operate to vest title upon the date of the approval of the statute making the grant or the date of the admission of the State into the Union, as to lands then surveyed, and as to the lands thereafter surveyed upon the date of the acceptance of the survey thereof by the Director of the Bureau of Land Management. (United States v. Morrison, 240 U.S. 192, 60 L. ed. 599; United States v. Sweet, 245 U.S. 563, 62 L. ed. 473; Wyoming et al. v. United States, supra.) It is held, therefore, that the grant made by the first paragraph of section 1 of the Act of January 25, 1927, subject to the provision therein with respect to indemnity or lieu lands, to the provisions of subsections (b) and (c) of said section 1 and following the plain provisions of subsection (a) thereof is effective upon the date of the approval of the Act (January 25, 1927) as to lands then surveyed and the survey thereof accepted by the Director of the Bureau of Land Management and as to the unsurveyed school sections in the State of Florida granted to that State by the Act of September 22, 1922. The grant, as to other lands thereafter surveyed, subject to the same provisions is effective upon the acceptance of the survey thereof as above indicated.

§ 2623.2 Claims protected.

(a) Valid applications, claims, or rights protected by the provisions of subsection (c) of section 1 of the Act of January 25, 1927, include applications, entries, selections, locations, permits, leases, and other forms of filing, initiated or held pursuant to existing laws of the United States prior to January 25, 1927, embracing known mineral school-section lands then surveyed and otherwise within the terms of the additional grant, and as to lands thereafter surveyed, valid applications, claims, or

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rights so initiated or held prior to the date of the acceptance of the survey. The additional grant to the State will attach upon the effective date of the relinquishment or cancellation of any claim, so asserted, in the absence of any other valid existing claim for the land and if same be then surveyed. Should the validity of any such claim be questioned by the State, proceedings with respect thereto by protest, contest, hearing, etc., will be had in the form and manner prescribed by existing rules governing such cases. This procedure will be followed in the matter of all protests, contests, or claims filed by individuals, associations, or corporations against the States affecting school-section lands.

§ 2623.3 States not permitted to dispose of lands except with reservation of minerals.

(a) Subsection (b) of section 1 of the Act of January 25, 1927, provides:

That the additional grant made by this Act is upon the express condition that all sales, grants, deeds, or patents for any of the lands so granted shall be subject to and contain a reservation to the State of all the coal and other minerals in the lands so sold, granted, deeded, or patented, together with the right to prospect for, mine, and remove the same. The coal and other mineral deposits in such lands shall be subject to lease by the State as the State legislature may direct, the proceeds of rentals and royalties therefrom to be utilized for the support or in aid of the common or public schools: *Provided*, That any lands or minerals disposed of contrary to the provisions of this Act shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States district court for the district in which the property or some part thereof is located.

(b) The lands granted to the States by the Act of January 25, 1927, and the mineral deposits therein are to be disposed of by the States in the manner prescribed in subsection (b) thereof, provision being made for judicial forfeiture in case of disposal of any of the lands or minerals contrary to the provisions of the act.

§ 2623.4 Grant of mineral school sections effective upon restoration of land from reservation.

(a) By the Act of January 25, 1927 (44 Stat. 1026; 43 U.S.C. 870, 871), which

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grants to the States certain school-section lands that are mineral in character, it is provided by subsection (c) of section 1 that where such lands are embraced within an existing reservation at the date of said Act of 1927, they are thereby excluded from the grant made by said act.

(b) Under the amendatory Act of May 2, 1932 (47 Stat. 140; 43 U.S.C. 870), it is provided that in the event of the restoration of the lands from such reservation, the grant to the State of such mineral school-section lands will thereupon become effective.

(c) Adjudications in connection with the State's title to school sections will be governed by the provisions of this amendatory Act of May 2, 1932.

Subpart 2624 [Reserved]

Subpart 2625—Swamp-land Grants

SOURCE: 35 FR 9610, June 13, 1970, unless otherwise noted.

§ 2625.0-3 Authority.

(a) Circular dated Mar. 17, 1896, containing the swamp-land laws and regulations, states:

As soon as practicable after the passage of the swamp-land grant of September 28, 1850, viz. on the 21st of November 1850, the commissioner transmitted to the governors of the respective States to which the grant applied copies of office circular setting forth the provisions of said Act, giving instructions thereunder, and allowing the States to elect which of two methods they would adopt for the purpose of designating the swamp lands, viz:

1. The field notes of Government survey could be taken as the basis for selections, and all lands shown by them to be swamp or overflowed, within the meaning of the act, which were otherwise vacant and unappropriated September 28, 1850, would pass to the States.

2. The States could select the lands by their own agents and report the same to the United States surveyor general with proof as to the character of the same.

The following States elected to make the field notes of survey the basis for determining what lands passed to them under the grant, viz: Louisiana, Michigan, and Wisconsin. Later the State of Minnesota adopted this method of settlement.

The authorities of the following States elected to make their selections by their own agents and present proof that the lands selected were of the character contemplated by the swamp grant, viz: Alabama, Arkansas, Florida, Illinois, Indiana, Iowa, Mississippi, Missouri, and Ohio. Later Oregon adopted this method.

The States of Alabama, Arkansas, Indiana, Mississippi, and Ohio adopted the second method at the beginning, but they changed to the first method, i.e., to the field notes of survey, as a basis of settlement, in recent years.

The authorities of California did not adopt either method, and the passage of the Act of July 23, 1866, rendered such action on their part unnecessary.

In Louisiana the selections under the grant of March 2, 1849, forming the bulk of the selections in said State, are made in accordance with the terms of said act by deputy surveyors, under the direction of the United States surveyor general, at the expense of the State.

(b) The grant of swamp lands, under Acts of March 2, 1849, and September 28, 1850, is a grant in praesenti. See United States Supreme Court decisions *Railroad Co. v. Fremont County* (9 Wall, 89, 19 L. ed. 563); *Railroad Co. v. Smith* (id. 95, 19 L. ed. 599); *Martin v. Marks* (7 Otto 345, 24 L. ed. 940); decisions of the Secretary of the Interior, December 23, 1851 (1 Lester's L.L. 549), April 25, 1862, and opinion of Attorney General, November 10, 1858 (1 Lester's L.L. 564).

(c) The Act of September 28, 1850, did not grant swamp and overflowed lands to States admitted into the Union after its passage. See decision of Secretary of the Interior, August 17, 1858; Commissioner, General Land Office, May 2, 1871 (Copp's L.L. 474), affirmed by Secretary June 1, 1871, and Commissioner, General Land Office, January 19, 1874 (Copp's L.L. 473), affirmed by Secretary July 9, 1875.

(d) A State having elected to take swamp land by field notes and plats of survey is bound by them, as is also the Government. (See Secretary's decisions, October 4, 1855 (1 Lester's L.L. 553), August 1, 1859 (id. 571), December 4, 1877 (4 Copp's L.L. 149), and September 19, 1879.

(e) The Swamp-Land Acts do not contain any exception or reservation of mineral lands and none is to be implied, since at the time of their enactment the public policy of withholding