

In reply refer to: AGB

JUL 5 1949

Honorable Carl Hayden  
United States Senate  
Washington 25, D. C.

Dear Senator Hayden:

Reference is made to your letter dated May 17, 1949, together with enclosures thereto, pertaining to the claim of Governor Dan E. Garvey of the State of Arizona of defects in title to lands formerly comprising the Ft. Huachuca Artillery Range, Arizona, and conveyed by this Administration to the State of Arizona for training and maintaining civilian components of the armed forces in accordance with the provisions of the Surplus Property Act of 1944, as amended, more particularly by Public Law 829, 80th Congress.

The complete records and files in this office have been re-examined and a conference with the Department of the Interior has been held, in accordance with the Governor's request, with a view towards resolving the questions posed in his letter. The facts with respect to the property involved are as follows:

This Administration approved the transfer of approximately 40,471.63 acres of land, including improvements and personal property, to the State of Arizona pursuant to the above-mentioned Public Law. Of such total acreage approximately 11,950.05 acres constituted a portion of the Ft. Huachuca Military Reservation which adjoined the Artillery Range. The Artillery Range constituted 28,521.53 acres, comprised as follows:

- (1) 9588.66 acres owned in fee by the Government and acquired by purchase and condemnation during the period of 1942 and 1945;
- (2) 3933.13 acres of public domain lands withdrawn for military use by Public Land Orders Nos. 251, dated November 22, 1944 and No. 16, dated July 21, 1942;
- (3) 14999.74 acres of State-owned lands used by the Government under an exchange agreement, the details of which will be herein below set forth.

The conveyance of the property in both the Artillery Range and the Military Reservation was accomplished by the execution and delivery of a quitclaim deed. With respect to the acreage acquired by the Government in fee, as indicated in (1) above, there appear to be no title difficulties. In connection with the 3,933.13 acres of land which formerly constituted a part of the public domain, this land was withdrawn by the above-mentioned orders both of which limited the duration of the

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withdrawal for military use. However, subsequent to the date thereof, the Surplus Property Act of 1944 was enacted which contained, among other provisions, the following pertinent section:

"Section 3d - The term 'property' means any interest, owned by the United States or any Government agency, in real or personal property, of any kind, wherever located, but does not include (1) the public domain, or such lands withdrawn or reserved from the public domain as the Surplus Property Board (created by section 5) determines are suitable for return to the public domain for disposition under the general land laws."

This Administration's interpretation of the above quoted section of the Surplus Property Act has been that Congress, by this legislation, has, in effect, superseded the limitations of the withdrawals whether they were accomplished by Public Land Orders or Executive Orders. The Department of the Interior has concurred in this construction of the Act, and based upon such mutual interpretation, working agreements between the two agencies were reached with respect to which of those properties formerly constituting public domain should be returned to public domain.

It is our opinion, therefore, that the limitations contained in the withdrawal orders were superseded by the Surplus Property Act, and that conveyance of this portion of land by this Administration was effective to transfer good merchantable title to the State of Arizona.

With respect to the State-owned lands, it is necessary to go back several years in order that a clear understanding of the entire situation may be had. During the early stages of the war, when it became apparent that the Government would require State-owned lands, the State of Arizona suggested that rather than have the Federal Government condemn such lands of the State as the United States might require for the prosecution of the war, the State would permit the Department of the Army to enter into possession of such lands needed by it, and that the State would thereafter make application to the Department of the Interior for an exchange of those State-owned lands made available to the War Department for public domain lands under the jurisdiction of the Department of the Interior. By informal agreement between the State and the Army, this procedure was followed. It was contemplated that when the exchanges were completed and title to the State-owned lands was acquired by the United States, the Department of the Interior would then formally withdraw for the use of, or transfer to, the War Department, jurisdiction thereover. However, the Department of the Interior, we are informally advised, did not participate in this agreement, nor did it at any time subsequent thereto, commit itself with respect to what action it would take by way of withdrawing or transferring to the War Department, jurisdiction over such State-owned lands the Government might acquire by virtue of exchange applications made by the State of Arizona. As of the date of Declaration of Surplus of the entire Ft. Huachuca Artillery Range to this Administration, none of the exchanges had been completed, so

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lands. The action taken by the Arizona State Land Commission in processing the exchange applications covering the Artillery Range State-owned lands, included within the conveyance from WAA to the State for National Guard purposes, clearly reflects the State's view that it still retains title to such lands as have yet not been exchanged. Any other construction of the effect of this Administration's deed to the State would be inconsistent with the State's continuing desire to effect exchanges, inasmuch as the deed prohibits the re-sale of the land conveyed thereby, and requires that it be continuously used for National Guard purposes for twenty years from the date of conveyance.

It is regretted that the deed as drawn, is ambiguous in the respects above-mentioned with the resulting effect of clouding the title. However, this Administration will be pleased to execute a correction deed in the form hereinabove suggested, if acceptable to the State's representatives. It is our opinion that such correction deed will effectively eliminate the defects in the title about which Governor Garvey has written you.

We shall await further word from you with respect to the desires of the State as to the acceptability of the proposed quitclaim deed.

Sincerely yours,

SIGNED PAUL L. MATHER

Paul L. Mather  
Rear Admiral, U.S.N., Ret.  
Liquidator of War Assets