Lisa M. McKnight

From: Lee.Leininger@usdoj.gov
Sent: Thursday, April 27, 2006 1:22 PM
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Subject: 1910 document additional pages

#150656-v1-Gi
__Ft__Huachuca

Lisa - I received the extra pages from the DOJ librarian and have scanned all the pages of the 1910 publication in my possession. The pages are attached to this email as a .pdf file. I also sent this file via first class mail on a CD-ROM to all the other counsel as a supplemental disclosure (along with the index of the disclosures mailed on March 30). I have a hearing in LA tomorrow, but let me know if you want to discuss this further next week. Lee

UNITED STATES

MILITARY RESERVATIONS NATIONAL CEMETERIES *and* MILITARY PARKS

TITLE
JURISDICTION
Etc.

PREPARED IN THE OFFICE OF THE JUDGE-ADVOCATE-GENERAL
UNITED STATES ARMY

REVISED EDITION: 1910

By LEWIS W. CALL, Chief Clerk and Solicitor

WASHINGTON
GOVERNMENT PRINTING OFFICE
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8. Where it has descended from an intestate ancestor to his heirs, satisfactory proof of the condition and number of the decedent's family must be given.

9. If the estate has passed by a judicial sale, or by a sale under the order of any court, or if it has been divided by proceedings in partition, the regularity of the sale or partition must be shown by a copy of the record.

10. The foreclosure of a mortgage can be shown only by an authentic copy of the proceedings had for that purpose.

11. When the wife of a grantor has not joined in a deed, some evidence must be given that he was unmarried at the time, or that his wife is since dead.

12. If the grantor be a woman, it must be shown that she was unmarried at the date of the deed from her.

13. When a deed is executed by the heirs of a person within twenty-one years after his death, evidance will be required to show that they were of full age at the time of the grant.

14. When the title has passed through a corporate body, the charter must be produced and the authority of the officer who granted away the estate must be shown.

15. When the estate has been conditional, it will be necessary to furnish clear proof that the conditions have been fulfilled or lawfully excused.

16. When the title depends on statute law, other than the public laws of the United States; upon a local law, differing from the general rule of the common law; upon a public document, or upon history, the books relied on to establish it should be accurately referred to and the page noted.

17. Presumptions arising from lapse of time will be allowed the weight given to them by the judicial tribunals of the State where the land lies. An apparent defect in an old deed need not be explained, if the possession of the property has been according to such deed for thirty years or upward.

18. A title offered to the United States will not be regarded as invalid on account of an outstanding title which has been barred by a legal limitation. But in all cases where time is relied on to extinguish an outstanding title, the party must show by clear proof, not only an adverse possession for the full period, but also that there are no persons who have rights that may be saved by exceptions to the statute.

19. Before sending the papers to this office for examination, they should be submitted to the attorney of the United States for the district in which the land lies. It will be his duty to certify an opinion on the whole title and to state particularly whether the local laws are correctly given, the papers properly authenticated, and the facts established by satisfactory proof. (Opins. Attys. Genl., Vol. 9, p. 528.)

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WAR DEPARTMENT,

Document No. 357.

OFFICE OF THE JUDGE-ADVOCATE-GENERAL.

UNITED STATES
TE

NOTE.—For authoriti
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Unimportant licenses

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FORT LISCUM.

This reservation, originally containing 1,600 acres, is located on the shore line at Port Valdez. A part of the public domain acquired by purchase from the Russian Government in 1867, it was set apart for military purposes by Executive Order, dated July 18, 1900. By Executive Order, dated December 31, 1903 (G. O., No. 10, W. D., January 14, 1904), the area of the reservation was reduced to 659.89 acres.

Revocable License: License, September 26, 1902, to Louis L. Williams to construct and use a wagon road across the reservation.

FORT LISCUM TARGET RANGE.

By Executive Order of October 26, 1906 (G. O., No. 186, W. D., November 12, 1906), a tract of about 1,700 acres, lying on the glacial flats of Valdez Glacier, and the mountain side to the west and situated north of the town of Valdez, was reserved, subject to private rights, and set part as a target range for the use of the troops of Fort Liscum.

POINT SPENCER.

This reservation includes the northern end of Point Spencer. The title is as follows: Part of the original purchase from the Russian Government by the United States in 1867, and reserved for public purposes by Executive Order dated January 23, 1900.

Revocable License: License, July 12, 1901, to the Pacific Steam Whaling Company to occupy for wharf and warehouse purposes a portion of the sand spit at Point Spencer.

FORT ST. MICHAEL.

This reservation formerly contained the land known as St. Michael Island, with all contiguous lands and islands within 100 miles of the flagstaff of the garrison on that island, October 20, 1897. The title is as follows: A part of the public domain ceded by Russia to the United States in 1867, is was declared a military reservation by Executive Order, dated October 20, 1897. By Executive Order, dated October 27, 1900, all lands in the limits of Fort St. Michael, except those embraced within the Island of St. Michael, and all other lands or islands lying within a radius of 10 miles of the flagstaff of the post of St. Michael, were placed under the control of the Secretary of the Interior for disposition, under act of Congress, July 5, 1884.

Revocable licenses have been granted to many individuals and corporations to reside and conduct business enterprises on the reservation.

Executive Order of June 8, 1906 (G. O. No. 114, War Department, June 20, 1906) provided for the relinquishment of the reservation November 1, 1907, except the tracts therein described as reserved for (1) "Post of Fort St. Michael;" (2) "Quartermaster's depot and shipyard;" (3) "Wireless telegraph station;" (4) "Target range (for collective fire);" and rights of way connecting the post reservation with the reservations for wireless telegraph station and for target range. The order of June 8, 1906, was revoked by Executive order of May 16, 1907 (G. O. 113, W. D., May 24, 1907), so that the reservation stands as fixed by the Executive order of October 27, 1900, *supra*.

FORT WILLIAM H. SEWARD.

This post is situated at Haines in the vicinity of Dyea, on Chilkat Inlet, Alaska. The reservations for the post are the "main reserve," area about 4,410 acres; the "clay reserve," area about 5.74 acres; and the "water reserve"—the metes and bounds of these reserves being given in the Executive order of April 23, 1909 (G. O. No. 89, W. D., May 4, 1909). By Executive order of December 31, 1898, a tract of about 1,280 acres was reserved; which tract was enlarged by Executive order of November 21, 1902, and a reservation made to secure a clay deposit for making roads. By Executive order of November 27, 1905, a reservation was made for water supply. These several reservations having been inaccurately described, they were redeclared by Executive order of April 23, 1909, *supra*, a small addition being made to the main reserve.

Revocable Licenses: License September 13, 1904, to A. R. Young to erect a building upon the reservation and to conduct therein a laundry.

License, April 7, 1909, to Board of Home Missions of the Presbyterian Church in the United States of America, jointly with the Town of Haines, Alaska, to make connection with and obtain a water supply for fire and domestic purposes, from the Water Supply System of this Post.

SKAGWAY.

This reservation contains 466.12 acres situated on Skagway River near Skagway. The title is as follows: Part of the public domain ceded by Russia to the United States in 1867, and declared a military reservation by Executive order dated May 21, 1903.

ARIZONA.

FORT APACHE.

This reservation contains an area of 7,579.75 acres, with metes and bounds as given in G. O. No. 162, W. D., August 4, 1909. It includes that portion of the White Mountain Indian Reservation situated in Townships 4 and 5 North, Range 23 East, Navajo County, restored to the public domain by Executive Order dated January 26, 1877, and declared a military reservation by Executive Order dated February 1, 1877.

Revocable License: License, September 28, 1899, to Charles Benson to establish a milk ranch on the reservation. Subsequently, with the approval of the Post Commander, Mr. Benson transferred his improvements to M. Jesus Valasquez.

FORT GRANT.

This reservation contains an area of 42,341 acres, more or less, and is situated in Townships 8, 9 and 10 South, Ranges 23 and 24 East, Graham County. Title is as follows: Public lands of the United States, reserved for military purposes by Executive Order of April 17, 1876. (G. O., Dept. Ariz., May 17, 1876.)

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By Executive Order, dated October 6, 1906 (G. O. No. 177, War Department, October 17, 1906), a considerable portion of this reservation was incorporated in the Mount Graham Forest Reserve to be protected and administered as a forest reserve, but "subject to the unhampered use of the War Department for military purposes."

Revocable Licenses: License, September 27, 1904, to Mr. and Mrs. Sam Earls to occupy for residential and laundry purposes Building No. 41.

License, September 27, 1904, to Mrs. Susan Earls to occupy for residential and laundry purposes Building No. 41.

License, September 27, 1904, to Marlove S. Deputy to occupy as a residence and dentist's office the building on the reservation known as the old hotel building.

License, September 27, 1904, to Ching Kee to occupy for residential and laundry purposes a building erected by himself upon the reservation.

FORT HUACHUCA.

This reservation contains an area of 70 square miles and is situated in Townships 21, 22, and 23 South, Ranges 19 and 20 (extended), Cochise County. Title is as follows: Public lands of the United States reserved for military purposes by Executive Orders of October 29, 1881; and May 14, 1883.

Revocable Licenses: License, September 2, 1904, to Louis Ma Wing to conduct a restaurant business upon the reservation, heretofore conducted by him under permission of the post commander.

License, September 2, 1904, to Wing Sing to conduct a laundry business upon the reservation, heretofore conducted by him under permission of the post commander.

License, September 2, 1904, to Ma Yu to conduct a laundry business upon the reservation, heretofore conducted by him under permission of the post commander.

License, September 2, 1904, to O. Cozby to conduct a photographic business upon the reservation, heretofore conducted by him under permission of the post commander.

MILITIA TARGET RANGES.

Near Tucson. This range comprises sections 19, 30, and 31, Township 14 South, Range 15 East, Gila and Salt River Meridian; and was reserved for use by the organized militia of the Territory of Arizona, as a rifle range, by Executive Order of November 13, 1909.

Near Phœnix. By order of the Secretary of the Interior of May 11, 1909, the SE. ¼, section 32; and the SW. ¼, section 33; Township 2 North, Range 4 East, were restored to the public domain, so far as affected by certain withdrawals for the reclamation service; and were reserved for use as a rifle range for the militia of the Territory of Arizona. Area: 320 acres.

WHIPPLE BARRACKS.

This reservation contains an area of 1,731.55 acres, and is situated in Township 14 North, Range 2 West, 1 mile from Prescott, in Yavapai County.

Title is as follows: Public land of the United States, reserved Executive Order dated August 31, 1869, as modified by Executi Order of October 19, 1875. (See G. O. 34, Dept. Arizona, Nover ber 23, 1875, relocating and giving boundaries of reservation.)

Easements: Acts of Congress, approved February 28, 1887, grant a right of way across the reservation to the Prescott and Arizo Central Railway Company.

Act of Congress approved February 18, 1893, granted a right way across the reservation to the Santa Fé, Prescott and Phoen Railway Company.

Revocable Licenses: License, June 15, 1895, to Private Richard Tea, retired, to construct, maintain, and use a one-room frame hou on the reservation.

License, April 10, 1896, to the Western Union Telegraph Compar to construct a line through the reservation adjacent to the right way of the Santa Fé, Prescott and Phoenix Railroad.

License, May 17, 1898, to T. E. Fitzsimmons to dig dirt from portion of the reservation for the purpose of making brick.

License, September 7, 1904, to Mrs. Teresa Greenwood, to occup one-story frame house, and outbuildings.

License, June 26, 1905, to the Prescott and Mount Union Railwa Company to construct and maintain a line of electric railway.

License, September 23, 1905, to Mr. Charles Bauer to occupy, in prove, and maintain an existing dwelling house.

License, March 17, 1906, to the Prescott Electric Company, to mai tain and operate its existing telephone line.

License, dated December 4, 1909, to The Arizona Power Compan for tower electric transmission line.

WHIPPLE BARRACKS TARGET RANGE.

This reservation contains approximately 1,680 acres and is situate in Yavapai County.

The title is as follows:

1. Set apart and declared for military purposes by Executiv Order, dated August 18, 1904. (G. O. 154, W. D., Sept. 16, 1904.)

2. Quitclaim deed from the Santa Fé and Pacific Railway Com pany, dated April 29, 1904, conveying 760 acres.

3. About 40 acres were added to this reservation by deed dated De cember 8, 1904, from John H. Smith, bachelor, and from the city o Prescott; recorded in Book 69 of Deeds, pages 439–441, records o Yavapai County, Ariz.; conveying NW. ¼ of SW. ¼ of section Township 14 N., Range 2 W., Gila and Salt River Meridian. (Se G. O. 13, W. D., February 2, 1905.)

ARKANSAS.

ARMY AND NAVY GENERAL HOSPITAL.

This reservation contains 20 acres and is situated at Hot Springs It was acquired by the Interior Department under acts of Congres of March 3, 1877 (19 Stat. L., 371), December 16, 1878 (20 id., 258) and June 16, 1880 (21 id., 289). By act of Congress of June 30, 188 (22 id., 121), making an appropriation for an "Army and Navy Hos

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APPENDIX.

EMINENT DOMAIN.

Right in the State.—The right to take property, for public uses, is inherent in government. The State possesses this right as one of the rights of sovereignty. (Gilmore *v.* Lime Point, 18 Cal., 229.)

A "fort" is an object of "public use," and a State may, for its own purposes, condemn land for a fort, or may authorize the land to be condemned for such purposes, for and on behalf of the general government. (Ibid.)

Assuming that the federal government has the power to condemn private land within a State for the purposes of a "fort," still that power is not exclusive of the power of the State. (Ibid.)

But it seems to be now well settled that the exercise of this right for *national* purposes is not among the ends contemplated in the creation of State governments. (See Trombley *v.* Humphrey, 23 Mich., 471.)

The right of eminent domain is inherent in the State and not conferred by the Constitution, and may be delegated by the legislature to any corporation or individual who shall comply with the terms upon which the right is given. (Moran *v.* Ross, 79 Cal., 159. See also 23 Mich., 471, supra.)

How far power of State restricted.—The right of eminent domain over the shores and the soil under the navigable waters, for all municipal purposes, belongs exclusively to the States within their respective territorial jurisdictions, and they, and they only, have the constitutional power to exercise it. * * * But in the hands of the State this power can never be used so as to affect the exercise of any *National* right of eminent domain or jurisdiction with which the United States have been invested by the Constitution. (Ib.)

Power of the Federal Government.—In the new Territories, where the government of the United States exercises sovereign authority, it possesses as incident thereto, the right of eminent domain, which it may exercise directly or through the territorial government; but this right passes from the nation to the newly formed State whenever the latter is admitted into the Union. So far, however, as the general government may deem it important to appropriate lands or other property for its own purposes, and to enable it to perform its functions—as must sometimes be necessary in the case of forts, lighthouses, military posts or roads, and other conveniences and necessities of government—the general government may still exercise the authority, as well within the States as within the territory, under its exclusive jurisdiction, and its right to do so may be supported by the same reasons which support the right in any case; that is to say, the absolute necessity that the means in the government for performing its

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making the contract or receiving the security; the power exists as an incident to sovereignty, and may be exercised by the proper department if not forbidden by legislation. (Dikes *v.* Miller, 25 Texas Supp., 281. See Dugan *v.* The United States, 3 Wheat., 172; The United States *v.* Tingey, 5 Peters, 114; The United States *v.* Bradley, 10 Peters, 343; The United States *v.* Levin, 15 Peters, 290; Nelson *v.* Lagow, 12 Howard, 107, and The United States *v.* Lane, 3 McLean, 366.)

Reservation for public purposes.—Decision as to the quantity of land to be reserved for public use, and the places where to be located, rests in the discretion of the President, subject to such regulations as may from time to time be provided by law, either as to the particular use, the quantity, or the subsequent disposal thereof for private use. (Vol. 6, p. 156, Opins. Attys. Gen.) "The subsequent disposal thereof for private use" has been modified by acts of Congress, particularly the act approved July 5, 1884, which reads as follows:

"That whenever, in the opinion of the President of the United States, the lands, or any portion of them, included within the limits of any military reservation heretofore or hereafter declared, have become or shall become useless for military purposes, he shall cause the same or so much thereof as he may designate, to be placed under the control of the Secretary of the Interior for disposition as hereinafter provided, and shall cause to be filed with the Secretary of the Interior a notice thereof." (Act of July 5, 1884; 23 Stats., p. 103.)

Lands acquired by United States for public purposes are not public lands.—Lands acquired by the United States for public uses, by purchase with the consent of the States, or by an exercise of the right of eminent domain, are not public lands, that term applying only to "such lands as are subject to sale or other disposition under general laws." (Newhall *v.* Sanger, 92 U. S., 761; Vol. 5, p. 578, Opins. Attys. Genl.) The power over the public lands is vested in Congress by the Constitution, without limitation, and is the foundation upon which the territorial government rests. (U. S. *v.* Gratiot, 14 Pet., 526.)

Title to lands purchased—When money can be expended—Duties of officers.—No public moneys shall be expended upon any site or land purchased by the United States for the purposes of erecting thereon any armory, arsenal, fort, fortification, navy-yard, custom-house, light-house, or other public building of any kind whatever, until the written opinion of the Attorney-General shall be had in favor of the validity of the title, nor until the consent of the legislature of the State in which the land or site may be, to such purchase, has been given. The district attorneys of the United States, upon the application of the Attorney-General, shall furnish any assistance or information in their power in relation to the titles of the public property lying within their respective districts. And the Secretaries of the Departments, upon the application of the Attorney-General, shall procure any additional evidence of title which he may deem necessary and which may not be in the possession of the officers of the government, and the expenses of procuring it shall be paid out of the appropriations made for the contingencies of the Departments respectively. (Sec. 355, U. S. Rev. Stats.)

Examination of land titles.—Upon this subject the Hon. Caleb Cushing spoke as follows: "Morally speaking, professionally

ing, officially speaking, when the Attorney-General certifies the validity of a title he *warrants* it to the Government. He does not warrant in law, as he does a piece of his own land which he sells; but he warrants in honor and conscience. It is upon the sole faith of his warranty, regardless of the warrantors in the deed, that the government buys the land, and proceeds to expend, it may be, millions of the public treasure, in the construction of edifices for the permanent use of the United States." (Vol. 8, p. 407 Opins. Attys. Genl.)

Title to land may be acquired by the United States prior to consent of State to the purchase.—Section 355, Revised Statutes, in prohibiting the expenditure of public money, for the purposes therein mentioned, before the consent of the State to the purchase of the land is obtained, does not preclude the mere purchase itself. The land therefore, may legally be paid for, and the title thereto acquired, in the absence of such consent. (Citing Vol. 10, p. 39, Opins. Attys Genl.; 15 id., 213.) Neither the constitutional provision (Art. 1 Sec. 8, cl. 17) nor the statute (Sec. 355, R. S.) precludes the United States from acquiring the title to the land. (Dig. Opin. J. A. Genl. 1901, sec. 683.)

Direct tax sale—Evidence of title—Certificate.—A certificate signed by only two of the direct-tax commissioners appointed under the act of Congress of June 7, 1862, that land charged with the tax had been sold to the United States is admissible in evidence in an action brought to try the title to land. It is error to rule such a certificate void. The act of Congress contemplates a certificate of sale though the United States becomes the purchaser. (Cooley *v.* O'Conner, 12 Wall., 391.)

Effect of certificate as evidence—How affected.—Where lands have been sold for an unpaid direct tax, the tax-sale certificate is, under the act of February 6, 1863, (12 Stat., 640), *prima facie* evidence not only of a regular sale, but of all the antecedent facts which are essential to its validity and to that of the purchaser's title. It can only be affected by establishing that the lands were not subject to the tax, or that it had been paid previously to the sale, or that they have been redeemed according to the provisions of the act. The ruling in Cooley *v.* O'Conner (12 Wall., 391), that the act of Congress contemplates such a certificate where the United States is the purchaser reaffirmed. (De Treville *v.* Smalls, 98 U. S., 517.)

Certificate given by commissioner prima facie evidence of regularity of sale, etc.—The court reaffirms the doctrine in De Treville *v.* Smalls (98 U. S., 517), that the certificate given by the commissioners to the purchaser of lands at a sale for a direct tax, under the act of June 7, 1862, (12 Stat., 422), as amended by the act of February 6, 1863, (id., 640), is *prima facie* evidence of the regularity of the sale and of all the antecedent facts essential to its validity and to that of his title thereunder, and that it can only be affected by establishing that the lands were not subject to the tax, or that it had been paid previously to the sale, or that they had been redeemed. (Keeley *v.* Sanders, 99 U. S., 441; the rulings in above case and in De Treville *v.* Smalls reaffirmed in Sherry *v.* McKinley, 99 U. S., 496).

Sale of land for taxes the highest exercise of sovereign power—When not valid.—No sale of land for taxes, no taxes can be assessed on any property, but by virtue of the sovereign authority in whose

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