

Wyoming 15 IBLA 194

Upon admission to the Union sections sixteen and thirty-six in every township were granted to the State of Wyoming. Where these sections or any parts thereof had been sold or otherwise disposed of, other lands were taken in lieu. In this case an Independent Resurvey established new section lines for section 36 but did not create a Tract to identify the original location for section 36 because, according to BLM, the State had selected other land in lieu of that land in original section 36. The State claims it never agreed to the lieu selection and wants patent to the original section 36.

This case cites *Wyoming v. United States*, 310 F.2d 566, which has some good background information, so we have included it at the end of this case.

Independent Resurvey Plat T. 16 N., R. 103 W.

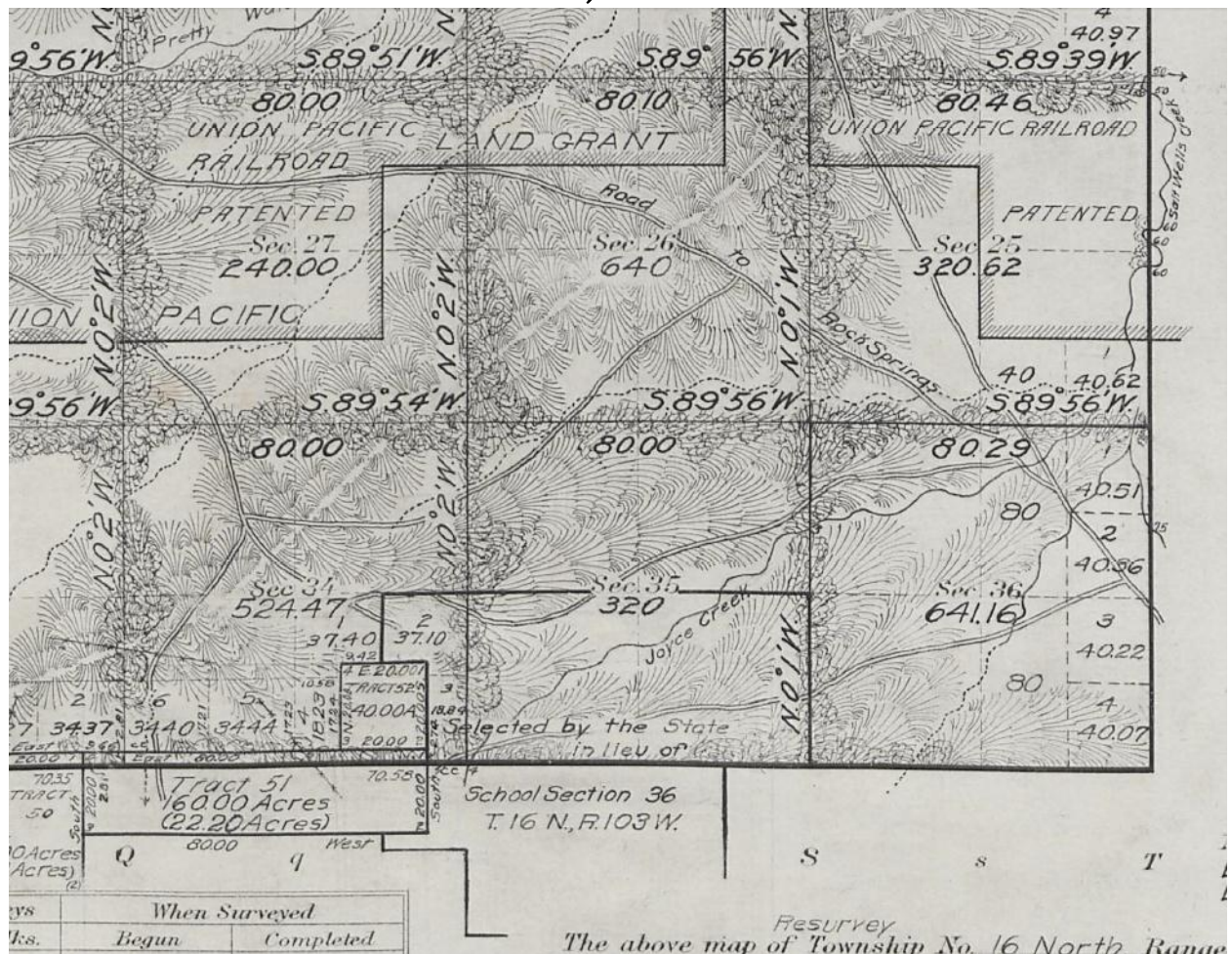


Table From Above Plat

<i>Index to Segregated Tracts</i>								
<i>Resurvey</i>	<i>Original Survey</i>							
<i>Nº</i>	<i>T.</i>	<i>R.</i>	<i>Sec.</i>	<i>Subdivision</i>	<i>Entry</i>		<i>Status in</i>	<i>Entryman</i>
					<i>Kind</i>	<i>Nº</i>	<i>Land Office</i>	
50	16	103	34	<i>N²SE¹SE¹NE⁴</i>	<i>SL</i>	60	<i>Approved</i>	<i>Wyoming</i>
51			35	<i>S²N²</i>	<i>SL</i>	13	<i>Approved</i>	<i>Wyoming</i>
52			35	<i>NE¹NE¹</i>	<i>SL</i>	60	<i>Approved</i>	<i>Wyoming</i>

STATE OF WYOMING

IBLA 72-433

Decided March 29, 1974

Appeal by the State of Wyoming from a decision by the Wyoming State Office, Bureau of Land Management, rejecting an application (W-33240) for a patent to school land in place.

Reversed and remanded.

School Lands: Generally--Surveys of Public Lands: Generally

The State of Wyoming does not lose its vested rights to a school section which passed to it upon its admission into the Union upon resurvey under the Act of May 29, 1908, 35 Stat. 465, unless the state elects to accept the resurveyed section and to waive its claim to the school section as originally surveyed.

School Lands: Generally

If the State of Wyoming chooses to accept other land offered as a school section based on a resurvey, under the Act of May 29, 1908, there must be a formal waiver by the state of the originally surveyed school section and a formal document of acceptance by the United States Government, and in the absence of such waiver and acceptance, title to the original section remains in the state.

APPEARANCES: A. E. King, Commissioner of Public Lands, Cheyenne, Wyoming, for the appellant; David K. Grayson, Esq., Office of the Solicitor, Department of the Interior, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE RITVO

The State of Wyoming has appealed to the Secretary of the Interior from a decision by the Bureau of Land Management's Wyoming State Office, dated May 1, 1972, denying its application for a patent to school section land in place. The State of Wyoming filed a patent application on January 31, 1972, for sec. 36, T. 16 N., R. 103 W., 6th P.M., Wyoming, as originally surveyed. The State Office found the application defective since the land applied for was not the school section land designated as such on the official plat, as resurveyed, in lieu of what was sec. 36, T. 16 N., R. 103 W., 6th P.M., of the original survey.

The problem in this case arises from the fact that many of the original surveys in Wyoming were found to be inaccurate, erroneous, or obliterated. By several statutes in 1903, 1905, and 1908, 1/ Congress directed that some 12,000,000 acres be resurveyed. T. 16 N., R. 103 W., 6th P.M., Wyoming, was one of the areas resurveyed pursuant to the 1908 Act.

The original survey had been approved on February 10, 1883. The resurvey of the township was made and approved on March 4, 1913. The resurvey placed section 36 as originally surveyed completely out of and to the south and west of section 36 as resurveyed. The original section 36 was not segregated by the surveyor at the time of resurvey. Instead, as a result of correspondence in 1913 with the Commissioner of Public Lands for the State of Wyoming, the United States Surveyor General's Office designated the following lands and proposed that the State accept the land in lieu of the original section 36:

- T. 15 N., R. 103 W., P.M., Wyoming
 - sec. 2, lots 6, 7, 8, SW 1/4 NE 1/4 and S 1/2 NW 1/4
 - sec. 3, lot 5
- T. 16 N., R. 103 W.,
 - sec. 34, lots 2 and 3
 - sec. 35, S 1/2.

While there was no formal acceptance of the proposal, the State Office determined that it had been in fact accepted. The basis of the Bureau of Land Management's determination that Wyoming accepted title to the lieu lands is a handwritten notation on the resurvey

1/ 32 Stat. 767; 33 Stat. 992; 35 Stat. 465.

plats reading, "Accepted by the Hon. Commissioner in his letter E, May 1, 1913." The Bureau of Land Management's State Office decision in this case refers to acceptance of the proposed new lands by the Commissioner of Public Lands for the State of Wyoming. However, the assumption that "Hon. Commissioner" referred to the State Officer is disputed in a letter by the Regional Solicitor's Office in Denver, dated December 3, 1963. In that letter, Bryan L. Kepford for the Regional Solicitor, surmised that "Hon. Commissioner" on the resurvey plat referred to the Commissioner of the General Land Office and not to the Commissioner of Public Lands for the State of Wyoming.

This Board concurs in the interpretation of the Regional Solicitor that the notation on the resurvey plat was not made on behalf of the State Land Commissioner. Other correspondence included in the record adds support to our interpretation. A letter dated February 10, 1913, by the State of Wyoming's Commissioner of Public Lands to the United States Surveyor General suggested that the State might be interested in the lieu selection. The letter indicated that the State had the option to select or reject the lieu selection. If the State were to accept the arrangements, there would presumably have been a formal waiver by the State of the lands in section 36 as originally surveyed and a formal document of acceptance by the United States Government. No such documents are in the file nor is there any evidence that they ever existed. Since the letter of February 10, 1913, cannot be construed as a waiver of the State's right to the original section 36, and since there is no evidence of a later waiver, this Board concludes that Wyoming never divested itself of its interest in section 36 as originally surveyed.

Our conclusion regarding divestiture finds support in Wyoming v. United States, 310 F.2d 566 (10th Cir. 1962), cert. denied, 372 U.S. 963 (1963). This case discusses in detail the difficulties which led to the resurvey statutes and some of the problems which resulted from them. The action was brought by the United States to settle title disputes with Wyoming over grants of certain school lands which had been resurveyed. The court held that the State did not get title to both the original and resurveyed sections, but only to one of them. It held that upon resurvey the State did not lose its vested right to the school section as originally surveyed. Only if the State elected to waive the claim to such original school section and accept lieu lands would a formal divestiture occur. The State would then have title to the resurveyed section. Since, as we have seen, no waiver of the State's right to the original section 36 has been found, we conclude that the State has never waived its right and still has title to section 36 as originally surveyed. Wyoming v. United States, supra at 581.

The application submitted by the State of Wyoming for section 36 as originally surveyed should be reconsidered by the Bureau of Land Management. In the absence of a finding that the State waived its claim to this section and accepted lieu lands in its stead, all else being regular, the Bureau of Land Management should issue the State a patent for the land under the Act of June 21, 1934, 43 U.S.C. § 871a (1970).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Wyoming State Office is reversed and remanded.

Martin Ritvo
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

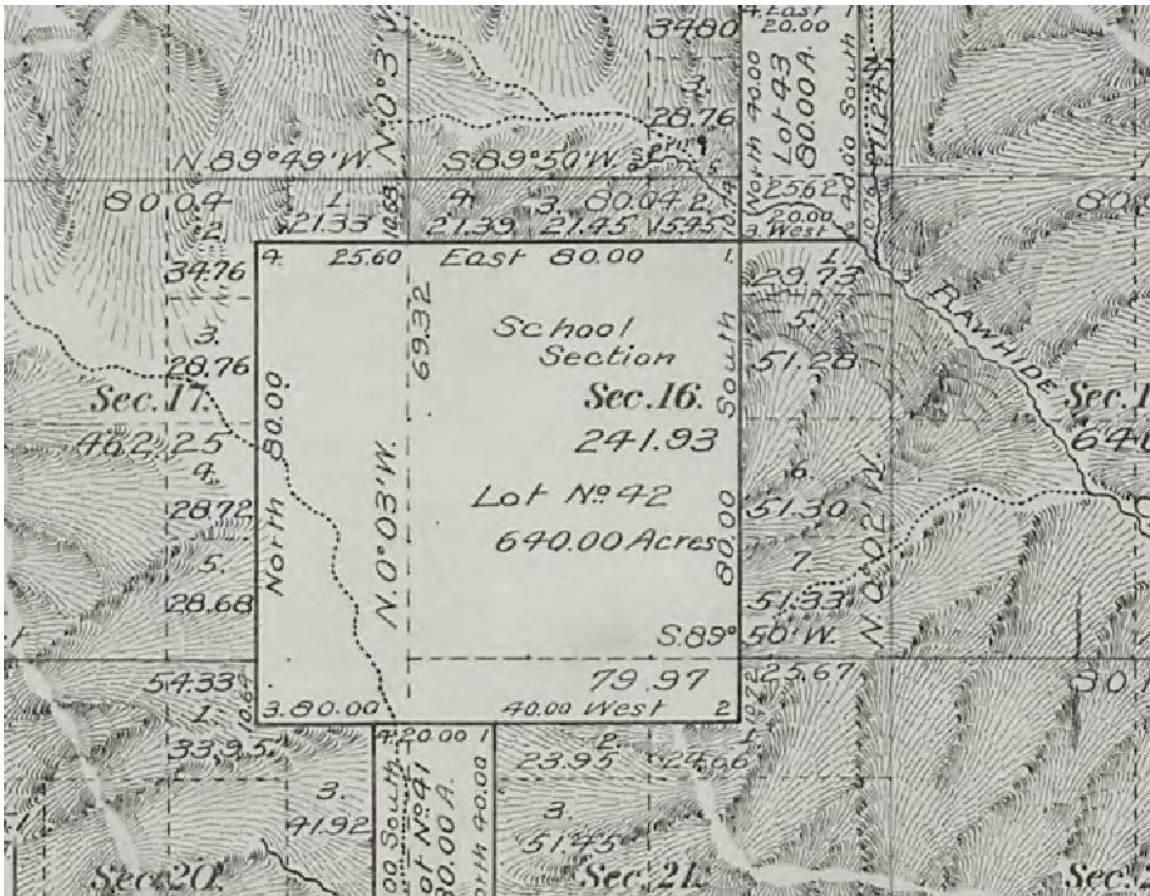
STATE OF WYOMING and the Richfield Oil Corporation, a Corporation, Appellants,

v.

UNITED STATES of America, Appellee.

No. 6869.

We have included the following portions of the Independent Resurvey Plat of T. 49 N., R. 103 W. which demonstrates how the state selections were generally noted on these plats. Notice the notation in Lot 42 which is reinforced by the information in the Index to Segregated Lots. You can view the entire plat at: <http://www.wy.blm.gov/cadastral/countyplats/sweetwater/t16nr103w.pdf>



INDEX TO SEGREGATED LOTS.

Lot No.	Original Survey				Entry Kind	Entry No.	Entryman
	T.	R.	Sec	Subdivision			
37	49	103	36	All	S.S.		Wyoming
38	"	"	12	W ² S E ² , S.W ² N.E ²	T&S	219	John A. Wise
"	"	"	13	N.W ² NE ²	"	"	" " "
39	"	"	34	W ² E ² NE ² &NW ² NE ²	S.L		Wyoming
40	"	"	27	W ² SE ² , SW ² NE ² &SE ² NW ²	T.S.	214	Louis G. Phelps
41	"	"	21	E ² NW ²	F.R.S.		Aztec Land & Cattle Co.
42	"	"	16	All	S.S.		Wyoming
43	"	"	10	W ² S.W. ²	F.R.S.		Aztec Land & Cattle Co.
44	"	"	4	NE ² NW ² &SW ² NW ²	F.R.S.		" " " "
45	"	"	20	E ² SW ² SE ² NW ²	H.E.		John P. Baldwin
"	"	"	29	NE ² NW ²	"		" " "
46	"	"	32	W ² , NW ² NE ² , SE ² NE ² , SW ² SE ²	S.L		Wyoming
47	"	"	31	All	S.L		"
48	"	"	30	S ²	S.L		"
49	50	"	36	All	S.S.		"
50	49	103	32	E ² SE ² , NW ² SE ² , S.W ² NE ²	H.E.	130	Wm Leonard
59	"	102	31	All	S.L		Wyoming
63	"	"	30	All	S.L		"
64	"	"	19	S ²	N.E.	761	Louis G. Phelps.
66	49	102	18	NW ² SW ² SE ² SW ² , SW ² SE ²	S.A.H.		" " "
"	"	"	19	NE ² NE ²	"		" " "
"	"	"	20	SW ² NW ²	"		" " "
71	"	"	7	NE ² SW ² &N ² S.E ²	T&S	282	Geo A. Merrill
"	"	"	8	NW ² SW ²	"	"	" " "

310 F.2d 566

STATE OF WYOMING and the Richfield Oil Corporation, a
corporation, Appellants,

v.

UNITED STATES of America, Appellee.

No. 6869.

United States Court of Appeals Tenth Circuit.

Oct. 12, 1962, Rehearing Denied Nov. 14, 1962.

William D. Foote and M. F. Schade, Los Angeles, Cal. (W. M. Haight, Deputy Atty.Gen., State of Wyoming, and Frank M. Callivan, Cheyenne, Wyo., were on the brief), for appellants.

S. Billingsley Hill, Atty., Dept. of Justice (Ramsey Clark, Asst. Atty. Gen., Dept. of Justice, Robert N. Chaffin, U.S. Atty., Cheyenne, Wyo., Roger P. Marquis and Margaret S. Willick, Attys., Dept. of Justice, were on the brief), for the United States.

Before PHILLIPS, PICKETT and HILL, Circuit Judges.

PHILLIPS, Circuit Judge.

1 The United States brought this action against the State of Wyoming¹ and Richfield Oil Corporation,² seeking a declaratory judgment, under 28 U.S.C.A. 2201, establishing its title to certain lands in the State of Wyoming, as against the adverse claims of title made by the State of Wyoming, and by Richfield Oil Corporation as the lessee under oil and gas leases on a portion of such lands. From a judgment in favor of the United States, the State of Wyoming and Richfield have appealed.

2 Section 4 of the Act providing for the admission of the State of Wyoming into the Union, 26 Stat. 222, in part reads:

3 'Sections numbered sixteen and thirty-six in every township of said proposed State, and where such sections, or any parts thereof, have been sold or otherwise disposed of by or under the authority of any act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said State for the support of common schools, such indemnity lands to be selected within said State in such manner as the legislature may provide, with the approval of the Secretary of the Interior: * * *.'

Section 12 of such Act in part reads:

4 'The State of Wyoming shall not be entitled to any further or other grants of land for any purpose than as expressly provided in this act; * * *.'

Section 14 of such Act in part reads:

5 '* * * And there shall be deducted from the number of acres of land donated by this act for specific objects to said State the number of acres heretofore donated by Congress to said Territory for similar objects.'

6 Article 18, 1 of the Wyoming Constitution, Wyoming Statutes, 1957, Vol. 1, p. 165, in part reads:

7 'The state of Wyoming hereby agrees to accept the grants of lands heretofore made, or that may hereafter be made by the United States to the state, for educational purposes, * * * with the conditions and limitations that may be imposed by the act or acts of congress, making such grants * * *.'

8 Article 18, 4 of the Wyoming Constitution, supra, in part reads:

9 'The legislature shall * * * provide by law for the location and selection of all lands that have been or may hereafter be granted by congress to the state, * * *.'

10 Section 2 of the Act of May 18, 1796, (The Public Lands Survey Act) 1 Stat. 464, 466, as carried forward in 43 U.S.C.A. 751, establishing the mode of surveying public lands, provides for the division of the public lands by north and south lines, running according to the true meridian, and by other lines crossing them at right angles, so as to form townships of six miles square; for the division of each township into thirty-six sections, each containing as nearly as may be, six hundred and forty acres; for the progressive numbering of such sections from one through thirty-six; and for the marking of the corners of each section. The public lands of the United States in the Territory of Wyoming were surveyed under the provisions of the Public Lands Survey Act. Such surveys were approved and accepted in 1883 and 1884. Thereafter, it was discovered that many of the surveys were either inaccurate or erroneous and that many of the monuments were obliterated. Because of those facts and the effect thereof upon titles to lands in the State of Wyoming, the State, acting through its officials, private claimants, and officials of the United States,³ requested Congress to provide for resurveys covering large areas in the State, so that the State, private and Federal lands could be accurately located.⁴ Congress responded to such requests in 1903, 1905 and 1908 by enacting legislation which directed resurveys of areas of the State in excess of 12,000,000 acres. The Resurvey Act of January 10, 1903, 32 Stat. 767, provides:

11 'That the Secretary of the Interior be, and he is hereby, authorized and directed to cause to be made a resurvey of the following townships in the State of Wyoming: (here follows a description of the townships to be resurveyed). * * * Provided, That nothing herein contained shall be so construed as to impair the present bona fide rights or claim of any actual occupant of any of said lands so occupied to the amount of land to which, under the law, he is entitled.'

12 The Resurvey Act of March 3, 1905, 33 Stat. 992, was substantially the same as the 1903 Act, except it described different townships. The Resurvey Act of May 29, 1908, 35 Stat. 465, was substantially the same as the two prior Acts, except it described different townships.

13 The resurveys under the 1903 Act were commenced shortly after that Act became effective and continued under it and the two latter Acts to and including 1921.

14 (When hereinafter we use the phrase 'original school section(s)' we mean the school section(s) as located by the original survey thereof and when hereinafter we use the phrase 'resurveyed school section(s)' we mean the school section(s) as located by the resurvey thereof.)

15 We disagree with the contention of counsel for appellants that we should consider only that part of the evidence which is specifically applicable to the 9 sections remaining in controversy in this action. The resurveys of the townships in which such sections were located were not isolated surveys, separate and apart from the resurveys of the other townships, made under the same or like Congressional authority and for the same reasons and purposes. On the contrary, the resurveys of such townships were a part of an overall plan to correct errors in earlier surveys of many townships. Hence, the conduct of the State and of the United States, with respect to the resurvey of other school sections, was pertinent to show the relative course of action of each in the carrying out of such overall plan and the reliance of the United States on such State conduct.

16 The officials of the State, throughout the period of the resurveys, actively cooperated and assisted in the making of such resurveys, acting on the premise that Congress intended that either the original school sections or the resurveyed school sections, but not both, should be segregated and designated as school sections granted to the State. On March 17, 1904, Mr. Gilcrest, State Land Inspector and member of the State Board of Land Commissioners, advised the United States Surveyor General that in the making of the resurveys, the State was entitled to have Sections 16 and 36 segregated as originally surveyed. Early in 1904, the State authorities were advised by the Surveyor General as to the desirability of having a representative on the ground to point out the original school sections, so that they could be segregated. By the Act of February 15, 1905, 36-35, Wyoming Statutes, 1957, it was provided that:

17 'The commissioner of public lands shall select and locate all lands which are now or may be hereafter granted to the State of Wyoming by the United States for any purpose whatever.'

18 On May 18, 1906, the Governor convened a special meeting of the State Board or School Land Commissioners, of which he was President, and the State Treasurer and Superintendent of Public Instruction were members. The minutes of that meeting recite the following:

19 'The question of the resurvey of lands in Wyoming being considered it was moved and duly carried that the officers of the Board be authorized to waive the right of the State of Wyoming to sections 16 and 36, or lands selected in lieu thereof, and accept similar numbered tracts, as resurveyed, or lieu land when upon resurvey said tracts are in conflict with private land claims, when such action is not apparently to the serious disadvantage of the State and that the officers of the Board be authorized to execute such papers as may be required by the United States to carry out this plan.'

20 Five days thereafter, the State Land Board adopted a motion stating that it waived its right to original school sections in 12 townships and 'agrees to accept in lieu thereof said numbered sections in said numbered townships * * * as resurveyed' and, thereafter, the successive State Commissioners of Public Lands (when it was in the State's interest to do so) consistently filed written waivers of the State's right to have the original school sections segregated and accepted in lieu thereof, as its school land grant, resurveyed school sections.

21 There were instances where the State officials waived the surveying out by metes and bounds of original school sections and agreed to accept in lieu thereof similarly numbered resurveyed school sections, and in those instances, in accordance with instructions from the Commissioner of the General Land Office, the lines of the original survey in such townships were not rerun.

22 The record discloses no instance where the State, under the Resolution of May 18, 1906, elected to accept resurveyed school sections in lieu of original school sections, that the State did not execute a waiver of its rights to the latter, and the record discloses many instances where upon such an election by the State it executed such a waiver.

23 When it was in the State's interest to retain original school sections, they were segregated and assigned a lot or tract number, but in those instances, except in the case referred to in Note 5, *infra*, a waiver of the resurveyed school sections was not deemed necessary, because it was presumed that no title thereto had passed, since the State retained its title to the original school sections.⁵

24 The State Commissioner very carefully weighed whether the State should retain in satisfaction of its grant an original school section, or elect to take a resurveyed school section. At no time did he assert a right to both.

25 Continuously, from the commencement of the resurveys until May 22, 1957, the State, acting through its duly authorized public officials, by the Resolution of May 18, 1906, by the execution of waivers of its claim to original school sections, by the selection of resurveyed school sections in lieu of original school sections, by elections to retain original school sections, and by the official opinion of its Attorney General, dated August 2, 1956, took the position that the State did not have title both to the lands in original school sections and to the additional lands in resurveyed school sections outside of the boundaries of the former.

26 Thereafter, on May 22, 1957, the Attorney General of the State issued an official opinion and held that the State had title to all of the lands in such original school sections and also in the resurveyed school sections. Under such opinion, the State claimed additional school lands, which, according to an estimate made by the Attorney General of the State, May 6, 1957, amounted to between 60,000 and 70,000 acres, and the oil and gas leases referred to above were issued to Richfield. Richfield agreed to undertake to obtain a final judicial determination with respect to the claims of the State and to defray the expense thereof.

27 Continuously, from the time such resurveys were commenced, up to the date of the trial of the instant case in the lower court, the United States has treated as public lands the areas embraced in

original school sections, where the State elected to execute waivers of its claim to such lands and selected in lieu thereof lands embraced in resurveyed school sections, and as public lands the lands embraced in resurveyed school sections, outside of the boundary lines of original school sections, where the State made no such waivers. During all that period of time, the United States has recognized homestead entries, and has issued public land patents and public land leases of portions of the land which it so treated as public lands.

28 On September 18, 1959, the United States instituted this action, seeking an adjudication with respect to the title to the areas embraced in the oil and gas leases from the State to Richfield and to land in several other sections selected by the United States as test sections. The action, as commenced, involved 19 sections. Ten were eliminated by agreement of the parties. We shall now turn to the pertinent facts with respect to the 9 remaining sections involved in the action.

29 Copies of the original resurvey plats of the townships in which the sections involved in this lawsuit are located were introduced in evidence.

30 The original surveys of the townships in which the sections involved in this action were located were inaccurate or erroneous and many of the monuments were obliterated. However, the boundary lines of the original school sections were identifiable and their original location was established and they were segregated according to the best evidence available.

31 Where the State elected to retain the land within an original school section, such land was designated on the official plat of the resurvey as a school section; and where the State elected to take the land embraced in a resurveyed school section as lieu land, only such lieu land was designated on such official plat as a school section. The official plats also identified lands that had been patented or otherwise disposed of by the United States. Thus, such official plats indicated by implication that the remaining lands were public lands. Moreover, each plat showed the total acreage in each township and broke it down into public lands, segregated lands and patented lands. In every instance, the acreage of public lands included the areas claimed by the State in this action.

32 The original survey of Section 16, T. 49 N., R. 103 W., Sixth P.M., Wyoming, was approved March 13, 1884. It was resurveyed under authority of the Resurvey Act of 1903. The official plat of such resurvey was approved August 8, 1907, and the survey was accepted November 13, 1907. The following diagram of a portion of such T. 49 N., R. 103 W., with the accompanying legend, is based on such official plat of the resurvey and shows the location of such section as originally surveyed, as resurveyed, the conflicting claims of the parties, and other data.

33 (ILLUSTRATION OMITTED)

34 There is a complete absence in the record of any showing that either the State Board of School Land Commissioners or its officers waived its claim to such Section 16, as originally surveyed, and selected in lieu thereof Lots 1 to 7, inclusive, and the remainder of Section 16, as resurveyed, pursuant to the Resolution of such Board of May 18, 1906, or otherwise.

35 Likewise, as to the 7 sections next considered, the inaction of the State is analogous. With respect to such sections, there is no showing in the record that either the State Board of Land Commissioners or its officers waived its claim to any of such original school sections and selected in lieu thereof the land in resurveyed school sections lying outside of the former and the remainder of such resurveyed school sections, pursuant to such Resolution of May 18, 1906, or otherwise.

36 The original survey of Section 36, T. 50 N., R. 90 W., Sixth P.M., Wyoming, was approved December 22, 1883. It was resurveyed under authority of the Resurvey Act of 1908. The official plat of such resurvey was approved August 10, 1914, and the resurvey was accepted October 21, 1914. The following diagram of a portion of such T. 50 N., r. 90 W., with the accompanying legend, is based on such official plat of the resurvey and shows the location of such section as originally surveyed, as resurveyed, the conflicting claims of the parties, and other data.

37 (ILLUSTRATION OMITTED)The original survey of Section 36, T. 51 N., r. 90 W., Sixth P.M., Wyoming, was approved December 22, 1883. It was resurveyed under authority of the Resurvey Act of 1908. The official plat of such resurvey was approved August 10, 1914, and accepted October 21, 1914. The following diagram of a portion of such T. 51 N., R. 90 W., with the accompanying legend, is based on such official plat of the resurvey and shows the location of such section as originally surveyed, as resurveyed, the conflicting claims of the parties, and other data.

38 (ILLUSTRATION OMITTED)The original survey of Section 36, T. 52 N., R. 90 W., Sixth P.M., Wyoming, was approved December 22, 1883. It was resurveyed under authority of the Resurvey Act of 1908. The official plat of such resurvey was approved August 10, 1914, and accepted October 21, 1914. The following diagram of a portion of such T. 52 N., R. 90 W., with the accompanying legend, is based on such official plat of the resurvey and shows the location of such section as originally surveyed, as resurveyed, the conflicting claims of the parties, and other data.

39 (ILLUSTRATION OMITTED)The original survey of Section 16, T. 51 N., R. 92 W., Sixth P.M., Wyoming, was approved March 20, 1884. It was resurveyed under authority of the Resurvey Act of 1908. The official plat of such resurvey was approved August 10, 1914, and accepted October 21, 1914. The following diagram of a portion of such T. 51 N., R. 92 W., with the accompanying legend, is based on such official plat of the resurvey and shows the location of such section as originally surveyed, as resurveyed, the conflicting claims of the parties, and other data.

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following diagram of a portion of such T. 52 N., R. 92 W., with the accompanying legend, is based on such official plat of the resurvey and shows the location of such section as originally surveyed, as resurveyed, the conflicting claims of the parties, and other data.

42 (ILLUSTRATION OMITTED)

43 The original survey of Section 16, T. 46 N., R. 102 W., Sixth P.M., Wyoming, was approved February 23, 1884. In 1903, by Presidential Proclamation, No. 42 (32 Stat. 2030), Section 16 was placed within the Yellowstone Forest Reserve and the State thereafter selected full indemnity land, pursuant to the Act of February 28, 1891 (26 Stat. 796). Section 16 was resurveyed under authority of the Resurvey Act of 1908. The official plat of such resurvey was approved December 13, 1919, and accepted June 4, 1920. The following diagram of a portion of such T. 46 N., R. 102 W., with the accompanying legend, is based on such official plat of the resurvey and shows the location of such section as originally surveyed, as resurveyed, the conflicting claims of the parties, and other data.

44 (ILLUSTRATION OMITTED)

45 The original survey of Section 16, T. 13 N., R. 105 W., Sixth P.M., Wyoming, was approved February 10, 1883. The official resurvey plat was approved November 18, 1902, and accepted February 28, 1903. The original survey placed Section 16 a considerable distance southwest of the position of Section 16, as shown by the resurvey, and no portion of the original Section 16 overlaps the resurveyed Section 16. As a result of the resurvey, the original Section 16 was segregated and designated as Lot 41. The resurveyed Section 16 was located in its normally accepted position and characterized as public lands. In addition to Section 16, the State also claims Lot 41.

46 In a letter dated April 4, 1924, from the Wyoming Commissioner of Public Lands to the United States Surveyor General, such Commissioner stated:

47 'You are advised that the position of other State lands in this township indicate that Lot 41 was the location of original Section 16 and as the acceptance of this tract by the State would connect up other State holdings, I hereby elect to accept for the State of Wyoming Lot 41 in satisfaction of the grant of original Section 16 to the State of Wyoming.'

48 The official resurvey plat bears a handwritten notation that 'Section 16 is public lands(,) Lot 41 is School Section 16(,) See State's letter Apr. 4, 1924.'

49 On the resurvey supplemental plat No. 2, approved February 15, 1927, the words 'Public Land' are printed on Section 16. That plat also contains a printed 'Index to Segregated Tracts' which lists resurveyed Lot 41 as 'Designated School Section.'

50 When Congress passed the Resurvey Act of 1908, it must be presumed to have known the construction which had been placed on the Resurvey Acts of 1903 and 1905 and the effect given to such earlier Acts by the Department of the Interior and the practices and procedures followed and carried out by such Department, with respect to the lands in the original school sections and resurveyed school sections. Therefore, when Congress enacted the Resurvey Act of 1908, without substantial change in any

relevant part, it manifested its approval and ratification of the administrative construction of the earlier Resurvey Acts by the Department of the Interior, the effect given thereto by such Department, and such practices and procedures.⁶

51 The long administrative practice of the State, acting through its public officials, by which it took the position that it did not have title both to the lands embraced in original school sections and the additional lands within resurveyed school sections, but outside the boundaries of the former, and the fact that the United States, in the administration of the public lands in Wyoming, acted in reliance on such State administrative practices, we think preclude the State from now asserting title both to the lands embraced in original school sections and to the additional lands within resurveyed school sections, but outside of the boundaries of the former.⁷ An important consideration impelling that conclusion is the fact that to hold otherwise would create a chaotic condition with respect to titles to portions of the additional land now claimed by the State, that have been acquired by private persons from the United States.

52 Of course, the right of a State to surrender lands acquired under an earlier grant from the Federal Government and to select from the public domain new lands in lieu thereof must be found in an act of Congress granting such right, and, we are of the opinion that the Department of the Interior correctly construed the Resurvey acts and administered them in accordance with the intent of Congress with respect thereto. Only clear language would warrant imputing to Congress an intention that the State would be entitled to lands embraced in an original school section and also in a resurveyed school section and thereby enlarge, in some cases very materially, the amount of the grant to the State.⁸

53 We conclude that when the boundary lines of original school sections were reestablished by resurveys thereof and such sections were identified by tract or lot numbers and the words 'School Section' inscribed on such tracts or lots, on the official plats of such resurveys, the State is entitled, under the grant to it of such school sections, only to the lands within such original school sections, unless it elected to waive its claim to such original school sections and to select in lieu thereof lands embraced in resurveyed school sections and in such case, it is only entitled to the lands embraced within the resurveyed school sections.

54 Counsel for appellants rely strongly on *United States v. Aikins*, D.C.S.D.Cal., 1949, 84 F.Supp. 260, *affd. sub nom. United States v. Livingston*, 9 Cir., 1950, 183 F.2d 192. We think the facts in the *Aikins* case clearly distinguish it from the instant case.

55 By the Act of March 3, 1853, 10 Stat. 244, Sections 16 and 36 of the public lands in California were granted to the State of California for school purposes. In 1869, Section 36, T. 29 S., R. 20 E., M.D.B. & M., and other school land sections, were surveyed under the authority of the United States by one Reed. Between the year 1869 and the year 1893, the State of California sold and issued patents for all of the land embraced in such Section 36, as located by the Reed Survey. In 1892, another official survey of the lands within such township was ordered by the United States and such survey was made by one Carpenter and approved in 1894. By the Carpenter Survey the southerly and easterly boundaries of the township were shifted south and east and the boundaries of the lands designated as Section 36 in the

Reed Survey were shifted southward and eastward. As the result of such shift by the Carpenter Survey, a portion of the lands included in such Section 36 by the Reed Survey was eliminated therefrom, and additional land, not theretofore designated in any former survey as being in any Section 36, or even in the township above mentioned, was included in such Section 36. The land involved in the Aikins case, being all of such additional land, was conveyed to one Jordan by the State of California as school land on December 1, 1914, pursuant to a mandate of the Court of Appeals of the State of California, issued as the result of its decision in *Jordan v. Kingsbury*, 25 Cal.App. 166, 143 P. 69. Private claimants to the land in the Aikins case were the successors in interest to Jordan and in that case the United States sought to quiet the title to such land as against Jordan's successors in title. In the second survey in the Aikins case, the instructions issued to Carpenter directed him to obliterate all lines and corners made by Reed. The land included in the Carpenter Survey of such township, which was not included in the Reed Survey, was wild land, had not theretofore been surveyed, and was not in any township until the Carpenter Survey. As stated by the trial court in the Aikins case, '* * * it would have been a simple matter for the Government to have adhered to Reed's South and East lines of the township and added the overage to the township south of Township 29, and to the township east of Range 20. * * * The land in question here would thus have fallen into the northerly tier of Sections in Township 30 South, Range 20 East, and into the westerly tier of Sections in Township 29 South, Range 21 East,' but it did not do so. Rather, it chose to designate the land involved in the Aikins case as being a part of such Section 36, T. 29 S., R. 20 E. Thereafter, the State of California treated such additional land in Section 36 as school land belonging to the State. The United States took no position to the contrary and made no claim to such land until it commenced its action against Aikins almost 44 years later. In the instant case, the United States relocated the original school sections and identified them on the official plats of the resurvey as either lots or tracts and designated them as school sections, unless the State elected to accept land in a resurveyed school section in lieu of the former. Where the State elected to retain original school sections, the additional lands embraced in the resurveys were identified as lots or tracts on the official plats and were regarded and administered as public lands by the United States at all times after the resurvey; and as we have heretofore shown, prior to 1957 the State at no time made any claim to the lands involved herein and by the acts and conduct of its officials recognized that such lands were the public lands of the United States.

56 To have sustained the claim of the United States in the Aikins case would have invalidated a private land title that had been recognized and relied on as valid for many years. To sustain the claims of the State in the instant case would invalidate many private land titles throughout the States that have been recognized and relied on as valid for many years.

57 Accordingly, the judgment is affirmed.

1 Hereinafter sometimes referred to as the State

2 Hereinafter called Richfield

3 The United States Surveyor-General for Wyoming; the Commissioner of the General Land Office, Department of the Interior; the Director of the United States Geological Survey; and the Secretary of the Interior

4 H.R.Report No. 2678, 57th Cong., 1st Session, June 25, 1902; S.Report No. 4342, 58th Cong., 3rd Session, Feb. 23, 1905; H.R.Report No. 1291, 60th Cong., 1st Session, March 23, 1908; 42 C.R., 60th Cong., 1st Session, pp. 7091, 7092

5 In the entire area of 12,000,000 acres resurveyed, the record disclosed only one instance where it was noted on the records of the United States Land Office that both the area embraced in the original survey, designated as Lot 41, and the land embraced in the resurvey thereof, designated as Section 16, belonged to the State. However, that error was discovered and brought to the attention of the Commissioner of Public Lands of the State of Wyoming on April 2, 1924, with the request that the State advise which of the two tracts it wished to retain in satisfaction of the school land grant of Section 16. On April 4, 1924, the Commissioner of Public Lands of the State of Wyoming, by letter addressed to the United States Surveyor General for Wyoming, advised that the State elected to accept Lot 41, being the land embraced in such section, as located by the original survey, in satisfaction of the grant of Section 16

6 National Lead Co. v. United States, 252 U.S. 140, 146, 40 S.Ct. 237, 64 L.Ed. 496; Salt Lake County v. Utah Copper Co., 10 Cir., 93 F.2d 127, 131; Globe Indemnity Co. v. Bruce, 10 Cir., 81 F.2d 143, 152; 82 C.J.S. Statutes 370, pp. 854, 855

7 New Mexico v. Colorado, 267 U.S. 30, 41, 45 S.Ct. 202, 69 L.Ed. 499; United States v. Oregon, 295 U.S. 1, 10, 55 S.Ct. 610, 79 L.Ed. 1267; Michigan Land and Lumber Co. v. Rust, 168 U.S. 589, 596-599, 18 S.Ct. 208, 42 L.Ed. 591; State v. Hatch, 9 Utah 2d 288, 342 P.2d 1103, 1105-1108; State of Michigan v; Jackson, L. & S.R. Co., 6 Cir., 69 F. 116, 121, 122

8 Michigan Land and Lumber Co. v. Rust, 168 U.S. 589, 603, 18 S.Ct. 208, 42 L.Ed. 591