

§ 851. Deficiencies in grants to State by reason of settlements, etc., on designated sections generally

Where settlements with a view to preemption or homestead have been, or shall hereafter be made, before the survey of the lands in the field, which are found to have been made on sections sixteen or thirty-six, those sections shall be subject to the claims of such settlers; and if such sections or either of them have been or shall be granted, reserved, or pledged for the use of schools or colleges in the State in which they lie, other lands of equal acreage are hereby appropriated and granted, and may be selected, in accordance with the provisions of section 852 of this title, by said State, in lieu of such as may be thus taken by preemption or homestead settlers. And other lands of equal acreage are also hereby appropriated and granted and may be selected, in accordance with the provisions of section 852 of this title, by said State where sections sixteen or thirty-six are, before title could pass to the State, included within any Indian, military, or other reservation, or are, before title could pass to the State, otherwise disposed of by the United States: *Provided*, That the selection of any lands under this section in lieu of sections granted or reserved to a State shall be a waiver by the State of its right to the granted or reserved sections. And other lands of equal acreage are also appropriated and granted, and may be selected, in accordance with the provisions of section 852 of this title, by said State to compensate deficiencies for school purposes, where sections sixteen or thirty-six are fractional in quantity, or where one or both are wanting by reason of the township being fractional, or from any natural cause whatever. And it shall be the duty of the Secretary of the Interior, without awaiting the extension of the public surveys, to ascertain and determine, by protraction or otherwise, the number of townships that will be included within such Indian, military, or other reservations, and thereupon the State shall be entitled to select indemnity lands to the extent of section for section in lieu of sections therein which have been or shall be granted, reserved, or pledged; but such selections may not be made within the boundaries of said reservation: *Provided, however*, That nothing in this section contained shall prevent any State from awaiting the extinguishment of any such military, Indian, or other reservation and the restoration of the lands therein embraced to the public domain and then taking the sections sixteen and thirty-six in place therein.

(R.S. §2275; Feb. 28, 1891, ch. 384, 26 Stat. 796; Pub. L. 85-771, §1, Aug. 27, 1958, 72 Stat. 928; Pub. L. 89-470, §1, June 24, 1966, 80 Stat. 220.)

Editorial Notes

CODIFICATION

R.S. §2275 derived from acts Feb. 26, 1859, ch. 58, 11 Stat. 385; June 22, 1874, ch. 422, 18 Stat. 202.

AMENDMENTS

1966—Pub. L. 89-470 struck out “or Territory” after “State” in eight places and substituted “before title could pass to the State” for “prior to survey” in two places.

1958—Pub. L. 85-771 inserted “in accordance with the provisions of section 852 of this title” and “prior to survey”, wherever appearing; substituted “That the selection of any lands under this section in lieu of sections granted or reserved to a State or Territory shall be a waiver by the State or Territory of its right to the granted or reserved sections.” for “Where any State is entitled to said sections 16 and 36, or where said sections are reserved to any Territory, notwithstanding the same may be mineral land or embraced within a military, Indian, or other reservation, the selection of such lands in lieu thereof by said State or Territory shall be a waiver of its right to said sections.”; substituted “section for section in lieu of sections therein which have been or shall be granted, reserved, or pledged” for “two sections for each of said townships, in lieu of sections 16 and 36 therein”; struck out from last extinguishment proviso “but nothing in this proviso shall be construed as conferring any right not in this section existing prior to February 28, 1891”, and otherwise amended section generally.

§ 852. Selections to supply deficiencies of school lands

(a) Restrictions

The lands appropriated by section 851 of this title shall be selected from any unappropriated, surveyed or unsurveyed public lands within the State where such losses or deficiencies occur subject to the following restrictions:

(1) No lands mineral in character may be selected by a State except to the extent that the selection is being made as indemnity for mineral lands lost to the State because of appropriation before title could pass to the State;

(2) No lands on a known geologic structure of a producing oil or gas field may be selected except to the extent that the selection is being made as indemnity for lands on such a structure lost to the State because of appropriation before title could pass to the State; and

(3) Land subject to a mineral lease or permit may be selected if none of the land subject to that lease or permit is in a producing or producible status, subject, however, to the restrictions and conditions of the preceding and following paragraphs of this subsection.

(4) If a selection is consummated as to a portion but not all of the lands subject to any mineral lease or permit, then, as to such portion and for so long only as such lease or permit or any lease issued pursuant to such permit shall remain in effect, there shall be automatically reserved to the United States the mineral or minerals for which the lease or permit was issued, together with such further rights as may be necessary for the full and complete enjoyment of all rights, privileges and benefits under or with respect to the lease or permit: *Provided, however*, That after approval of the selection the Secretary of the Interior shall determine what portion of any rents and royalties accruing thereafter which may be paid under the lease or permit is properly applicable to that portion of the land subject to the lease or permit selected by the State, the portion applicable being determined by applying to the sum of the rents and royalties the same ratio as that existing between the acreage selected by the State and the total acreage subject to the lease or permit; of the portion applicable to the selected land 90 per centum shall be paid to the State by the

United States annually and 10 per centum shall be deposited in the Treasury of the United States as miscellaneous receipts.

(5) If a selection is consummated as to all of the lands subject to any mineral lease or permit or if, where the selecting State has previously acquired title to a portion of the lands subject to a mineral lease or permit, a selection is consummated as to all of the remaining lands subject to that lease or permit, then and upon condition that the United States shall retain all rents and royalties theretofore paid and that the lessee or permittee shall have and may enjoy under and with respect to that lease or permit all the rights, privileges, and benefits which he would have had or might have enjoyed had the selection not been made and approved, the State shall succeed to all the rights of the United States under the lease or permit as to the mineral or minerals covered thereby, subject, however, to all obligations of the United States under and with respect to that lease or permit.

(b) Adjustments

Where the selections are to compensate for deficiencies of school lands in fractional townships, such selections shall be made in accordance with the following principles of adjustment, to wit: For each township, or fractional township, containing a greater quantity of land than three-quarters of an entire township, one section; for a fractional township, containing a greater quantity of land than one-half, and not more than three-quarters of a township, three-quarters of a section; for a fractional township, containing a greater quantity of land than one-quarter, and not more than one-half of a township, one-half section; and for a fractional township containing a greater quantity of land than one entire section, and not more than one-quarter of a township, one-quarter section of land: *Provided*, That the States which are, or shall be entitled to both the sixteenth and thirty-sixth sections in place, shall have the right to select double the amounts named, to compensate for deficiencies of school land in fractional townships.

(c) Preference rights for State

Notwithstanding the provisions of section 282¹ of this title on the revocation not later than 10 years after the date of approval of this Act, of any order of withdrawal, in whole or in part, the order or notice taking such action shall provide for a period of not less than six months before the date on which it otherwise becomes effective in which the State in which the lands are situated shall have a preferred right of application for selection under this section, subject to the requirements of existing law, except as against the prior existing valid settlement rights and preference rights conferred by existing law other than section 282¹ of this title, or as against equitable claims subject to allowance and confirmation, and except where a revocation of an order of withdrawal is made in order to assist in a Federal land program.

¹ See References in Text note below.

(d) "Unappropriated public lands" defined; determination of mineral character of land

(1) The term "unappropriated public lands" as used in this section shall include, without otherwise affecting the meaning thereof, lands withdrawn for coal, phosphate, nitrate, potash, oil, gas, asphaltic minerals, oil shale, sodium, and sulphur, but otherwise subject to appropriation, location, selection, entry, or purchase under the nonmineral laws of the United States; lands withdrawn by Executive Order Numbered 5327, of April 15, 1930, if otherwise available for selection; and the retained or reserved interest of the United States in lands which have been disposed of with a reservation to the United States of all minerals or any specified mineral or minerals.

(2) The determination, for the purposes of this section of the mineral character of lands lost to a State shall be made as of the date of application for selection and upon the basis of the best evidence available at that time.

(R.S. §2276; Feb. 28, 1891, ch. 384, 26 Stat. 797; Pub. L. 85-771, §2, Aug. 27, 1958, 72 Stat. 928; Pub. L. 86-786, §§1, 2, Sept. 14, 1960, 74 Stat. 1024; Pub. L. 89-470, §2, June 24, 1966, 80 Stat. 220.)

Editorial Notes

REFERENCES IN TEXT

Section 282 of this title, referred to in subsec. (c), was repealed by Pub. L. 94-579, title VII, §702, Oct. 21, 1976, 90 Stat. 2787.

Date of approval of this Act, referred to in subsec. (c), probably means date of approval of Pub. L. 85-771, which was Aug. 27, 1958.

CODIFICATION

R.S. §2276 derived from acts May 20, 1826, ch. 83, §1, 4 Stat. 179; Feb. 26, 1859, ch. 58, 11 Stat. 385; June 22, 1874, ch. 422, 18 Stat. 202.

AMENDMENTS

1966—Pub. L. 89-470 struck out "or Territory" after "State" once in subsec. (a), twice in subsec. (a)(1), and once each in subsecs. (a)(2), (c), and (d)(2), and "or Territories" after "States" in subsec. (b); substituted "before title could pass to the State" for "prior to survey" in subsec. (a)(1) and (2); and inserted "or unsurveyed" after "surveyed" in subsec. (a).

1960—Subsec. (a). Pub. L. 86-786, §1, substituted "If none of the land subject to that lease or permit is in a producing or producible status, subject, however, to the restrictions and conditions of the preceding and following paragraphs of this subsection" for "but only if all of the lands subject to that lease or permit are selected and if none of the lands subject to that lease or permit are in a producing or producible status; where lands subject to a mineral lease or permit are selected, the State or Territory shall succeed to the position of the United States thereunder", in par. (3), and added pars. (4) and (5).

Subsec. (d)(1). Pub. L. 86-786, §2, included interest of United States in lands which have been disposed of with a reservation to United States of all minerals.

1958—Pub. L. 85-771 designated introductory clause as subsec. (a) and added restrictions (1) to (3) thereto; designated remainder as subsec. (b) and added subsecs. (c) and (d).

Statutory Notes and Related Subsidiaries

UNIVERSITY OF ALASKA; GRANTEE OF LANDS, IMPROVEMENTS, AND PERSONAL PROPERTY OF ALASKA AGRICULTURAL EXPERIMENT STATION

Pub. L. 102-415, §9, Oct. 14, 1992, 106 Stat. 2114, provided that: "Notwithstanding any other provision of

law, the Secretary of the Interior shall convey to the University of Alaska, by quitclaim deed and without consideration, all the right, title, and interest of the United States in and to—

“(1) the lands of the University of Alaska Agricultural Experiment Station, consisting of approximately 16 acres, including improvements on the lands, located at Palmer and Matanuska, Alaska; and

“(2) the lands of the University of Alaska Fur Farm Experiment Station, consisting of approximately 37 acres, including improvements on the lands, located at Petersburg, Alaska, subject to the terms of—

“(A) the lease between the Forest Service and the University of Alaska dated March 29, 1978; and

“(B) the agreement between the parties listed in subparagraph (A) dated March 2, 1983.”

Pub. L. 89-620, Oct. 4, 1966, 80 Stat. 871, authorized the Secretary of Agriculture to convey by quitclaim deed and without consideration to the University of Alaska for public purposes all the right, title, and interest of the United States in and to the lands of the Alaska Agricultural Experiment Station, including improvements thereon, and such personal property as may be designated, located at Palmer and Matanuska, Alaska.

UNIVERSITY OF ALASKA; ADDITIONAL LAND GRANT FOR AGRICULTURAL COLLEGE AND SCHOOL OF MINES; CONDITIONS AND LIMITATION

Pub. L. 108-452, title I, §105(a), Dec. 10, 2004, 118 Stat. 3579, provided that: “As of January 1, 2003, the remaining State entitlement for the benefit of the University of Alaska under the Act of January 21, 1929 (45 Stat. 1091, chapter 92) [set out below], is 456 acres.”

Act Jan. 21, 1929, ch. 92, 45 Stat. 1091, as amended July 12, 1960, Pub. L. 86-620, 74 Stat. 408; Sept. 19, 1966, Pub. L. 89-588, 80 Stat. 811; Pub. L. 108-452, title I, §105(b), Dec. 10, 2004, 118 Stat. 3579, provided: “That in addition to the provision made by the Act of Congress approved March 4, 1915 (thirty-eighth Statutes at Large, page 1214 [classified to section 353 of Title 48, Territories and Insular Possessions, and provisions set out in the Site for Agricultural College and School of Mines note below], for the use and benefit of the Agricultural College and School of Mines, there is granted to the State of Alaska, for the exclusive use and benefit of the Agricultural College and School of Mines, one hundred thousand acres of vacant nonmineral surveyed unreserved public lands in the State of Alaska, to be selected, under the direction and subject to the approval of the Secretary of the Interior, by the State, and subject to the following conditions and limitations:

“SEC. 2. That the college and school provided for in this act shall forever remain under the exclusive control of the said State, and no part of the proceeds arising from the sale or disposal of any lands granted herein shall be used for the support of any sectarian or denominational college or school.

“SEC. 3. (a) The State of Alaska (referred to in this Act as the ‘State’), acting on behalf of, and with the approval of, the University of Alaska, may select—

“(1) any mineral interest (including an interest in oil or gas) in land located in the State, the unreserved portion of which is owned by the University of Alaska; or

“(2) any reversionary interest held by the United States in land located in the State, the unreserved portion of which is owned by the University of Alaska.

“(b) The total acreage of any parcel of land for which a partial interest is conveyed under subsection (a) shall be charged against the remaining entitlement of the State under this Act.

“(c) In taking title to a reversionary interest, the State, with the approval of the University of Alaska, waives all right to any future acreage credit if the reversion does not occur.

“SEC. 4. The Secretary may survey any vacant, unappropriated, and unreserved land in the State for purposes of allowing selections under this Act.

“SEC. 5. The authorized outstanding selections under this Act shall be not more than—

“(1) 125 percent of the remaining entitlement; plus
“(2) the number of acres of land that are in conflict with land owned by the University of Alaska, as identified in Native allotment applications on record with the Bureau of Land Management.”

UNIVERSITY OF ALASKA; SITE FOR AGRICULTURAL COLLEGE AND SCHOOL OF MINES

Act Mar. 4, 1915, ch. 181, §2, 38 Stat. 1215, provided: “That section numbered 6 in township numbered one south of the Fairbanks base line and range numbered one west of the Fairbanks meridian; section numbered thirty-one, in township numbered one north of the Fairbanks base line and range numbered one west of the Fairbanks meridian; section numbered one, in township numbered one south of the Fairbanks base line and range numbered two west of the Fairbanks meridian; and section numbered thirty-six, in township numbered one north of the Fairbanks base line and range numbered two west of the Fairbanks meridian, are granted to the Territory of Alaska, but with the express condition that they shall be forever reserved and dedicated to use as a site for an agricultural college and school of mines: *Provided*, That nothing in this Act [classified to section 353 of Title 48, Territories and Insular Possessions, and set out in this note] shall be held to interfere with or destroy any legal claim of any person or corporation to any part of said lands under the homestead [law, chapter 7 of this title.] or other law for the disposal of the public lands acquired prior to the approval of this Act [Mar. 4, 1915]: *Provided further*, That so much of the said land as is now [Mar. 4, 1915] used by the Government of the United States as an agricultural experiment station may continue to be used for such purpose until abandoned for that use by an order of the President of the United States or by Act of Congress.”

§ 852a. Applications for unsurveyed lands; regulations; acreage requirements

The Secretary of the Interior may issue regulations governing applications for unsurveyed lands. If he establishes any minimum acreage requirements, they shall provide for selection of tracts of reasonable size, taking into consideration location, terrain, and adjacent land ownership and uses.

(Pub. L. 89-470, §3, June 24, 1966, 80 Stat. 220.)

§ 852b. Survey of lands prior to transfer; time for survey; availability of funds; lands suitable for transfer

Prior to issuance of an instrument of transfer, lands must be surveyed. The Secretary of the Interior shall within five years, subject to the availability of funds, survey the exterior boundaries of lands approved as suitable for transfer to the State.

(Pub. L. 89-470, §4, June 24, 1966, 80 Stat. 220.)

§ 853. Selections in Utah to supply deficiencies of school lands

All the provisions of sections 851 and 852 of this title, which provide for the selection of lands for educational purposes in lieu of those appropriated for other purposes, are made applicable to the State of Utah, and the grant of school lands to said State, including sections 2 and 32 in each township, and indemnity therefor, shall be administered and adjusted in accordance with the provisions of said sections, anything in the Act approved July 16, 1894, providing for the admission of said State into the Union, to the contrary notwithstanding.