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U.S. DISTRICT COURT

U.S. DISTRICT COURT

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DISTRICT OF UTAH

BY: _____
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Attorneys for Plaintiff United States

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH - CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BRUCE LEE DUNN, et al.,

Defendants.

Case no. 2:99CV 0145 TS

**ORDER RE PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT**

Judge Ted Stewart

2007 MAY 29 PM 12:10
DISTRICT OF UTAH

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The Motion for Summary Judgment of Plaintiff, the United States of America, came on for hearing at 3:10 p.m. on Thursday, July 28, 2005, before the Honorable Ted Stewart. Plaintiff was represented by John K. Mangum of the United States Attorney's Office. The Dunn group of Defendants were represented by E. Jay Sheen. The Jacobsen group of Defendants were represented by Steven R. Paul. Other Defendants did not oppose the motion, either themselves or through counsel. Defendant Oakland Homes was represented by Kristine M. Larsen who attended the hearing but made no argument at the hearing. Pro Se Defendants John and Lillie Woolsey and Timothy A. Hurst made no appearance at the hearing.

Having reviewed the submissions of the parties, and heard the arguments of counsel, the Court now finds and concludes as follows:

Findings of Fact

The following facts are established to exist without material dispute:

1. This is an action to quiet title to approximately 205 acres of land in various adjoining parcels of property located in Carbon County, Utah (the "Subject Property"). The Subject Property lies partly under and adjoins the south side of the east arm of Scofield Reservoir. See Plaintiff's Exhibits 1-4. This Subject Property also includes the land under the south portion of the dam which impounds the reservoir water, and some land immediately downstream from the present dam. The Subject Property is all contiguously-located within the South ½ of Section 10 and within the West ½ of the Southwest quarter of the Southwest quarter of Section 11, T. 12 S., R. 7 E., Salt Lake Base & Meridian. More particularly, the Subject Property consists of the following lands in Carbon County, Utah, located in Township 12 South, Range 7 East, Salt Lake Base and Meridian: In Section 10, all of the following: SW 1/4; S ½ of SE 1/4; and S ½ of NE 1/4 of SE 1/4. In Section 11: W ½ of SW 1/4 of SW 1/4. Excluding from both sections, ribbons of land conveyed to 1) the State of Utah for State Highway 96, and 2) Denver and Rio Grand Western Railroad for the railroad track.

2. Some of the Subject Property was the subject of two of three deeds to adjoining property all executed by the same grantors in a three-day period in September of 1927. Those common grantors were E.B. Jorgensen and his wife Gertrude S. Jorgensen, of Salt Lake City.

a. The first deed (the "Railroad Deed"), is a warranty deed dated September 20, 1927, to the Denver and Rio Grande Western Railroad Company, as grantee. See Plaintiff's Exhibit 5. It conveyed a 200 foot wide ribbon of land, 100 feet on either side of the centerline of the track of the route of the then-existing relocated Pleasant Valley line of the railroad. In relevant part, it

traversed section 10 in first a northerly route from the south end of that section near the southwest corner and then an easterly route through sections 10 and 11 of the affected township and range, a little south of an earlier version of Scofield Reservoir then known as the Pleasant Valley Reservoir, as the railroad headed from coal mines south of the town of Scofield past that earlier reservoir and dam and then eastward into and down Price Canyon toward Helper. The Railroad Deed was recorded last of the three deeds on November 30, 1927.

b. The second deed (the "1927 Madsen Deed"), is a quitclaim deed dated September 21, 1927, to two brothers, Neil M. Madsen of Price, Carbon County, and Andrew C. Madsen, of Mt. Pleasant, Sanpete County. See Plaintiff's Exhibit 6, graphically illustrated by Plaintiff's Exhibit 7. This deed quitclaimed, among other parcels, a fee simple interest in the property east and south of the Railroad Deed, to which it referred. That land so quitclaimed by the 1927 Madsen Deed was generally higher in elevation than the land to the west and north of it. The 1927 Madsen Deed was the first recorded of the three deeds, being recorded on Nov. 2, 1927.

c. The third deed (the "1927 PRWCD Deed"), is a warranty deed to Price River Water Conservancy District ("PRWCD"), a public corporation, dated September 22, 1927. See Plaintiff's Exhibit 8, graphically illustrated by Plaintiff's Exhibit 9. This deed conveyed, among other lands, the land west and north of the Railroad Deed, to which it also referred. That land so conveyed by the 1927 PRWCD Deed was generally below or lower in elevation than the land to the east and south of it. This deed was the second recorded of the three deeds, being recorded on November 2, 1927, minutes after the 1927 Madsen Deed was recorded. PRWCD was then the owner and operator of a smaller predecessor reservoir to what is now known as Scofield

Reservoir, which was then sometimes referred to as the Pleasant Valley Reservoir. See Plaintiff's Exhibits 8, 11 & 13.

3. The 1927 Madsen Deed, at least in the only recorded and presently known abstract form, contained three separate paragraphs describing the various lands quitclaimed thereby. The language describing the property at issue in sections 10 and 11 is all contained in the first paragraph. In later paragraphs, after describing other lands, there is language in the 1927 Madsen Deed giving rights to the "grantees, their heirs, administrators and assigns to use any part or portion of said subdivisions of land below and between the said 7630 contour line [first mentioned and described at the beginning of the second paragraph] and the water line of said reservoir, when the same are not actually covered by the water therein, for any and all purposes not inconsistent with the flowage and storage of water thereon." Plaintiff's Exhibit 6.

4. The 1927 PRWCD Deed, at least in the only recorded and presently known abstract form, also contained several separate paragraphs describing the various lands conveyed and warranted thereby. The language describing the Subject Property is contained in the first paragraph. However, in a new paragraph after all parcels to which the 1927 PRWCD Deed pertains are described, additional language of reservation is included which states: "and subject to right to graze or otherwise use any portion of said lands where not actually covered by water of grantee's reservoir, heretofore granted to Neil M. Madsen and Andrew C. Madsen." Plaintiff's Exhibit 8.

5. The rest of the property at issue in this action (the North ½ of the SW 1/4 of section 10) was acquired by PRWCD in 1928 from Sarah Reese Jones, as Administratrix of the estate of

Martha Reese, who had won a quiet title judgment in the seventh judicial district court of the State of Utah to that land in 1927. See Plaintiff's Exhibit 10.

6. By quitclaim deed dated February 5, 1945, and recorded August 9, 1945, PRWCD conveyed the lands it owned relating to the Scofield Reservoir to the United States. That deed included all of the land in 1) the 1927 PRWCD Deed, 2) the 1928 administratrix deed from Sarah Reese Jones described above, and, 3) other adjoining or nearby lands acquired by PRWCD. See Plaintiff's Exhibit 13, illustrated in Plaintiff's Exhibit 14.

7. Construction work on the new Scofield Dam was commenced by the United States in 1943 and completed in 1946. Plaintiff's Exhibit 11 at p. 1141.

8. In connection with the construction of the new Scofield dam, a land purchase contract dated October 2, 1943 (signed in following weeks), to purchase from Anna Wilcox Madsen (the widow and successor of Neil M. Madsen), and Louise Madsen Watts (the daughter and successor of Andrew C. Madsen) and her husband, Joseph L. Watts, 137.4 acres of land in the southern parts of section 10 and the southwestern corner of section 11 of T. 12 S., Range 7 E. This property had been a part of the 1927 Madsen Deed property described above. This land purchase contract was recorded on December 1, 1943, shortly after it was signed by Parley R. Neeley, the construction engineer for the Bureau of Reclamation, acting for the United States. See Plaintiff's Exhibit 15. Paragraphs 3 and particularly 5 of that contract obligated the vendors to provide the necessary documentation to show they had fee simple unencumbered title to the contract property which they could convey to the United States by general warranty deed. This clearing of any potential title defects was a prerequisite to payment to vendors.

9. The United States corresponded with Anna Madsen, her co-vendors, and various of their representatives, over a period of more than four years, from late 1943 to mid 1948, concerning a variety of efforts to clear up potential title defects disclosed by the title work the United States had done in early 1944 concerning the lands that were the subject of the 1943 land purchase contract described above. See Plaintiff's Exhibit 16. That correspondence shows that while some items were cleared up early on, the most problematic issue that took the longest time was obtaining a quitclaim deed from Carbon County. That quitclaim deed was requested and ultimately prepared by the United States to clear up an earlier perceived potential title defect. That quitclaim deed was finally signed and delivered in June of 1948, and recorded on June 26, 1948, as shown in Plaintiff's Exhibit 17, together with the minutes of the May 18, 1948, meeting of the Carbon County Board of County Commissioners authorizing the signing of that quitclaim deed. Those minutes recite that the deed was "for certain property being used by the Bureau of Reclamation for Scofield Reservoir." The June 1, 1948, quitclaim deed is graphically illustrated in Plaintiff's Exhibit 18.

10. In 1944, while correspondence between the United States and the contract vendors was still ongoing, the vendors (Anna Madsen and Louise M. and Joseph Watts) signed the warranty deed to the United States, conveying the 137.4 acres described in the 1943 land purchase contract. The warranty deed was recorded on November 15, 1944. Plaintiff's Exhibit 19, illustrated by Exhibit 20.

11. Also earlier, to further facilitate the "acceptance by the United States" of property it desired for the expanded Scofield Reservoir, the Carbon County Board of County Commissioners passed a resolution in June of 1944 abating all county taxes assessed for the year

1944 for more than one dozen tracts of land, including the property described in the October 2, 1943, land purchase contract (identified as Tract No. 1 in the county resolution.) See Plaintiff's Exhibit 22, graphically illustrated by Exhibit 23.

12. In 1948, after the recording of the June 1, 1948 quitclaim deed from Carbon County, the Bureau of Reclamation determined the United States had obtained clear title to the property from Madsens and paid the purchase price of \$1,231.20 to vendors in early January of 1949. See Plaintiff's Exhibits 21.

13. On March 4, 1948, Anna W. Madsen signed two quitclaim deeds, for reasons not clear, each in favor of both of her two daughters, Johannah M. Hafen and Alice M. Pannier, as joint tenants, granting them a variety of lands including but not limited to significant portions of the Subject Property. The two quitclaim deeds so signed by Anna Madsen in 1948 were not recorded until April 6, 1956. See Plaintiff's Exhibit 24.

14. The subsequent deeds to the individual Defendants trace their root back to either these March 1948 quitclaim deeds or to the June 1948 quitclaim deed from Carbon County, evidenced by Exhibit 17 hereto, or later deeds from Anna W. Madsen and/or Louise Watts beginning in 1956 or later, or some combination thereof. None of the Defendants claim any title based on the deeds to the United States of the 1940s. The location of the lands claimed by Defendants are depicted on Plaintiff's Exhibit 25.

15. The Jacobsen Defendants obtained a copy of a preliminary title report effective in May of 1968, indicating that the United States had some interest in at least some of the Subject Property. See Plaintiff's Exhibit 26. Also, Defendant Helen Louise Watts testified in her deposition that she may have obtained a title report once from Professional Title in Price, Utah,

years before the lawsuit started that may have shown the United States as having some interest in the Subject Property. See Plaintiff's Exhibit 27.

16. Carbon County delivered a quitclaim deed dated and signed May 27, 1936, to Anna W. Madsen (widow of Neil M. Madsen) and to Abbie C. Madsen (then widow of Andrew C. Madsen), the property description of which includes all the land in the south ½ of the SE 1/4, and the south ½ of the SW 1/4 of section 10. See Plaintiff's Exhibit 31, graphically illustrated by Exhibit 32. That 1936 Carbon County quitclaim deed follows an auditor's tax deed dated January 3, 1936, to Carbon County, describing the same property. Exhibit 31.

17. The Carbon County final tax sale for 1936 occurred on May 29, 1936, two days after the date of the quitclaim deed from Carbon County. See Plaintiff's Exhibit 33. Carbon County's December 21, 1928, record of preliminary tax sales, on which the later 1936 deeds were based, has a more complete handwritten property description. It shows that the relevant property there at issue, assessed to E. B. Jorgensen, described only the land of Madsens south and east of the railroad property, and not that of PRWCD north and west of the railroad, and that a redemption payment was made on May 20, 1936. See Plaintiff's Exhibit 34.

Conclusions of Law

1. The Court concludes that the 1927 Madsen Deed is ambiguous as to whether or not, for the property in question in this action in sections 10 and 11 (mentioned in the first paragraph of the lands description in that 1927 Madsen Deed), the Madsen grantees and their successors were given any of the reserved rights to use those lands when not submerged by waters of the reservoir, as was more clear for the different lands described in later paragraphs of that deed.

This conclusion of ambiguity is supported by those in the Bureau of Reclamation who over the years since the federal acquisition have interpreted the language in the federal chain of title to give the Madsen successors such a reserved right, as well as by the conduct of the parties in not earlier pursuing final resolution of the title status in a more timely manner, suggesting that no one had an absolute sense of confidence in their title claims.

2. The Court concludes that the May 27, 1936, quitclaim deed to Anna and Abbie Madsen from Carbon County was a redemption deed and not a deed resulting from any final tax sale and did not convey any effective interest in lands theretofore owned by the Price River Water Conservancy District in sections 10 and 11 north and west of the railroad right of way.

3. The Court concludes that the 1943 land purchase contract and the 1944 warranty deed to the United States from Anna Madsen and Louise and Joseph Watts (the then Madsen successors) are valid and fully effective conveyances to the United States of the lands described in those documents. As such, fee simple title to the lands described therein should now be quieted in the United States, free and clear of any interest claimed by Defendants in the lands in sections 10 and 11 specifically described by the 1943 land purchase contract and 1944 warranty deed.

4. The Court further concludes as a matter of federal law that adverse possession cannot be claimed against the United States either under the facts of this case, or under the law as set forth in 28 U.S.C. §2409a(n) and United States v. Stubbs, 776 F.2d 1472 (10th Cir. 1985).

5. The Court also concludes that Defendants have not met their burden to support a claim of estoppel in this case which may undermine the title of the United States to the subject lands. Based on all of the evidence before the Court, the Court cannot conclude that the four traditional

elements of estoppel are here met. In particular, there is insufficient evidence that the federal government agents in 1977 or at other times of any claimed estoppel knew all the facts necessary to support the estoppel claimed by Defendants against the title of the United States. Also, the Court cannot conclude that Defendants or their predecessors in interest, as the parties claiming estoppel, were ignorant of the true facts, given their actual or constructive knowledge of the recorded documents establishing the title of the United States. Most importantly to an estoppel claim against the federal sovereign, and dispositive of this claim, is that the Court cannot find any affirmative misconduct on the part of any agent of the United States necessary to support any such estoppel claim.

6. Lastly, the Court concludes that Defendants have not produced any evidence to contradict the title claim of the United States to the North ½ of the SW 1/4 of section 10, acquired by Price River Water Conservancy District in 1928 from Sarah Reese Jones, as Administratrix of the estate of Martha Reese.

ORDER

Accordingly, the Court partially grants and partially denies the motion of the United States for summary judgment to quiet title in the United States.

The motion is granted and fee simple title in the United States is hereby quieted as to all the lands in the North ½ of the SW 1/4 of section 10, and as to all that portion of the subject lands covered by the 1943 land purchase contract and the 1944 warranty deed to the United States from Anna W. Madsen and Louise M. and Joseph L. Watts, free and clear of any claimed interests of Defendants. The lands so described in that contract and deed include the South half

of the Southwest quarter and the Southwest quarter of the Southeast quarter of Section 10, T. 12 S., R. 7 E., S.L.B. & M., to the extent they are located south and east of the railroad right of way; and all the lands in the South half of the Northeast quarter of the Southeast quarter of said section 10, together with the lands in the Southeast quarter of the Southeast quarter of said section 10 and all the lands within the West ½ of the Southwest quarter of the Southwest quarter of Section 11, T. 12 S., R. 7 E., Salt Lake Base & Meridian, except to the extent covered by the right of way of the Denver and Rio Grande Western Railroad Co.

The summary judgment motion of the United States is partially denied as to that portion of the subject lands in the South ½ of the Southwest quarter and the Southwest quarter of the Southeast quarter of Section 10, T. 12 S., R. 7 E., Salt Lake Base & Meridian, to the extent such lands are located north and west of the railroad right of way. This denial only extends to the single issue whether Defendants or their predecessors in interest received under the 1927 Madsen Deed a reserved right to use any part or portion of said lands in section 10 "below and between the said 7630 contour line and the water line of said [Pleasant Valley, now Scofield] reservoir, when the same are not actually covered by the water therein, for any and all purposes not inconsistent with the flowage and storage of water thereon." Subject only to further determination of whether this reserved use right applies to said lands in section 10, the fee simple title of the United States in these described lands in section 10 north and west of the railroad right of way is hereby confirmed and quieted.

The existence and scope of Defendants' claimed reserved use right under the 1927 Madsen Deed and the 1927 PRWCD Deed in said lands in section 10 shall be determined hereafter in further court proceedings.

Dated this 4th day of ^{July} ~~October~~, 200⁶.

BY THE COURT:



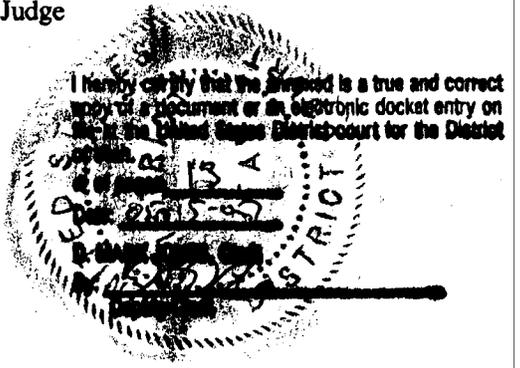
Hon. Ted Stewart
District Court Judge

Approved:

ARMSTRONG LAW OFFICES, P.C.

 10/28/05

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Steven R. Paul
Attorneys for Defendants Jacobsen, et al.



ROBINSON & SHEEN, P.C.

E. Jay Sheen
Attorneys for Defendants Dunn, et al.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the United States Attorney's Office, and that a true and accurate copy of the foregoing [proposed] **ORDER RE PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**, was mailed, United States first-class postage prepaid, to each party addressed as shown below, this 30th day of November, 2005:

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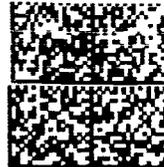
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