



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON

A-33388

October 23, 1930.

Marguerite P. Carmack has requested review of settlement of May 22, 1930, disallowing her claim for repayment of \$400, purchase money paid on a portion of mineral entry 016676, Sacramento, Calif., series.

It appears from the records that the claimant made the mineral entry in question May 2, 1927, for the Outbreak, Snow Shoe and Pacific Blue Lead placer claims, embracing an aggregate area of 290 acres, and deposited in connection therewith \$725 as purchase money. By letter of August 4, 1927, the Commissioner of the General Land Office held the entry for cancellation in part for conflict, to the extent of 14.31 acres, with prior patented claim known as the Secret Canon Quartz Mine, and the entry was canceled to that extent October 14, 1927.

Thereafter the Forest Service filed a protest against the Snow Shoe and Pacific Blue Lead claims charging that the claims were nonplacer mineral in character and that the necessary expenditures had not been made thereon. The charges were denied and a disposition of one witness was taken as to the mineral character of the claim and, thereafter, the claimant filed a withdrawal of the entry as to the two claims and patent issued upon the remaining claim for 129.99 acres requiring \$325 of the purchase money.

The provisions of law for refund of money paid in connection with public land entries of the class here involved are found in section 2 of the act of June 16, 1880, 21 Stat. 287, and section 1 of the act of March 26, 1908, 35 Stat. 48, as amended by the act of December 11, 1919, 41 Stat. 366, and are as follows:

"In all cases where homestead or timber-culture or desert-land entries or other entries of public lands have heretofore or shall hereafter be canceled for conflict, or where, from any cause, the entry has been erroneously allowed and cannot be confirmed, the Secretary of the Interior shall cause to be repaid to the person who made such entry, or to his heirs or assigns, the fees and commissions, amount of purchase money, and excesses paid upon the same upon the surrender of the duplicate receipt and the execution of a proper relinquishment of all claims to said land, whenever such entry shall have been duly canceled by the Commissioner of the General Land Office, * * *."

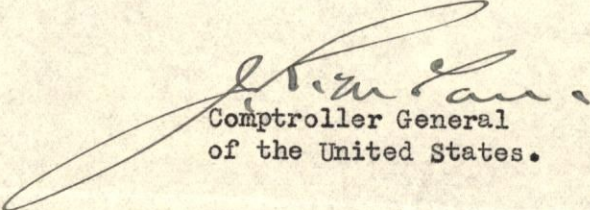
"That where purchase moneys and commissions paid under any public land law have been or shall hereafter be covered into the Treasury of the United States under any application to make any filing, location, selection, entry, or proof, such purchase moneys and commissions shall be repaid to the person who made such application, entry, or proof, or to his legal representatives, in all cases where such application, entry, or proof has been or shall hereafter be rejected, and neither such applicant nor his legal representatives shall have been guilty of any fraud or attempted fraud in connection with such application: Provided, That such person or his legal representatives shall file a request for the repayment of such purchase moneys and commissions within two years from the rejection of such application, entry, or proof, or within two years from the passage of this Act as to such applications, proofs, or entries, as have been heretofore rejected."

In order that repayment of the purchase money may be made under the act of 1919, there must have been a rejection by the Government of the application of entry and a lack of fraud or attempted fraud on the part of the applicant. The withdrawal of the portion of the entry in the face of the charges of failure to comply with the law as to improvements and that the claim was not of the character claimed

in the entry, is not such a rejection as would authorize the repayment of the purchase price of the land so relinquished. A-30525, March 24, 1930, and A-32388, July 17, 1930.

It appears, however, that a portion of the entry, aggregating 14.31 acres, was canceled for conflict with a prior patented claim. As to such portion, therefore, the entry had been erroneously allowed and could not have been confirmed within the meaning of the 1880 act, supra.

Upon review there is certified due claimant \$35.77, the purchase price of 14.31 acres canceled for conflict, the disallowance of the remaining portion of the claim being sustained.


Comptroller General
of the United States.