

Sec. 3—New States

Cl. 2—Property of the United States

in issue, the contention was advanced that “disposal is not letting or leasing,” and that Congress has no power “to give or authorize leases.” The Court sustained the leases, saying “the disposal must be left to the discretion of Congress.”³⁰¹ Nearly a century later this power to dispose of public property was relied upon to uphold the generation and sale of electricity by the Tennessee Valley Authority. The reasoning of the Court ran thus: the potential electrical energy made available by the construction of a dam in the exercise of its constitutional powers is property which the United States is entitled to reduce to possession; to that end it may install the equipment necessary to generate such energy. In order to widen the market and make a more advantageous disposition of the product, it may construct transmission lines and may enter into a contract with a private company for the interchange of electric energy.³⁰²

Public Lands: Federal and State Powers Thereover

No appropriation of public lands may be made for any purpose except by authority of Congress.³⁰³ However, Congress was held to have acquiesced in the long-continued practice of withdrawing land from the public domain by Executive Orders.³⁰⁴ In 1976 Congress enacted legislation that established procedures for withdrawals and that explicitly disclaimed continued acquiescence in any implicit executive withdrawal authority.³⁰⁵ The comprehensive authority of Congress over public lands includes the power to prescribe the times, conditions, and mode of transfer thereof and to designate the persons to whom the transfer shall be made,³⁰⁶ to declare the dignity and effect of titles emanating from the United States,³⁰⁷ to determine the validity of grants which antedate the government's acquisition of the property,³⁰⁸ to exempt lands acquired under the homestead laws from previously contracted debts,³⁰⁹ to withdraw land

³⁰¹ 39 U.S. at 533, 538.

³⁰² *Ashwander v. TVA*, 297 U.S. 288, 335–40 (1936). *See also* *Alabama Power Co. v. Ickes*, 302 U.S. 464 (1938).

³⁰³ *United States v. Fitzgerald*, 40 U.S. (15 Pet.) 407, 421 (1841). *See also* *California v. Deseret Water, Oil & Irrigation Co.*, 243 U.S. 415 (1917); *Utah Power & Light Co. v. United States*, 243 U.S. 389 (1917).

³⁰⁴ *Sioux Tribe v. United States*, 316 U.S. 317 (1942); *United States v. Midwest Oil Co.*, 236 U.S. 459, 469 (1915).

³⁰⁵ Federal Land Policy and Management Act, Pub. L. 94–579, § 704(a); 90 Stat. 2792 (1976).

³⁰⁶ *Gibson v. Chouteau*, 80 U.S. (13 Wall.) 92, 99 (1872); *see also* *Irvine v. Marshall*, 61 U.S. (20 How.) 558 (1858); *Emblem v. Lincoln Land Co.*, 184 U.S. 660, 664 (1902).

³⁰⁷ *Bagnell v. Broderick*, 38 U.S. (13 Pet.) 436, 450 (1839). *See also* *Field v. Seabury*, 60 U.S. (19 How.) 323, 332 (1857).

³⁰⁸ *Tameling v. United States Freehold & Immigration Co.*, 93 U.S. 644, 663 (1877). *See also* *Maxwell Land-Grant Case*, 121 U.S. 325, 366 (1887).

³⁰⁹ *Ruddy v. Rossi*, 248 U.S. 104 (1918).