regard the statute under which the selection was made does not differ from other land laws offering a conveyance of the title to those who accept and fully comply with their terms.

Id. at 500.

The thrust of the argument posed by BLM is that this decision makes clear that the Oregon Supreme Court erred in its holding that title to lands offered as base in a forest lieu exchange vested in the United States only upon an act which could be deemed an acceptance. Rather, BLM contends, since it has been generally agreed that title to the base property tendered in a lieu selection would certainly have vested in the United States no later than the vesting of title to the selected property in the applicant, and the United States Supreme Court had determined that vesting of title to the selected property in an applicant is not controlled by the actual date in which the Department examines the proposed exchange, the vesting of title to the offered lands in the United States is, itself, not dependent upon actual review of the application by the duly authorized officers. Therefore, BLM concludes, to the extent that the Oregon Supreme Court purported to cancel the deeds issued to Hyde for Supplement B and C lands on the theory that the United States had acquired no rights because the officers had not "accepted" the applications, such action was clearly premised upon a mistake of law.

The basic problem with BLM's analysis is that, given the facts of this case, its ultimate conclusion does not flow from its premise. The Supreme Court did not state that the mere filing of an application for exchange accompanied by a selection vests title in the applicant. Rather, the Supreme Court held that the filing of a *proper* exchange so acts. It is clear from the Court's decision in *Wyoming* v. *United States, supra*, that the acceptability of the proposed exchange is to be judged by advertence to the conditions occurring at the time of the filing of the application. What BLM overlooks, however, is that the attempted transfer of the base property to the United States was the result of fraudulent activities.

It is true, of course, that as of the time the United States came to examine the exchange applications for Supplement A lands, this fraud had not yet come to light. But BLM errs in assuming that the test of the validity of the application is dependent upon what the specific officers of the Department *knew* at the time the application was filed as opposed to what the facts *were* at that time. Such is not the case.

The fallacy in BLM's position becomes clear if one remembers that prior to the adoption of the Taylor Grazing Act, 43 U.S.C. § 315 (1976), it was possible to initiate a homestead entry through settling on the lands sought without informing GLO before commencing settlement. As the Department noted in Circular No. 541, 48 L.D. 389 (1922), so long as a settler on surveyed lands made entry in the local land office within 3 months of settlement, a preference right to make the entry arose upon occupancy of the lands. *Id.* at 391. Such right was good against all but the United States. *See Rice* v. *Simmons*, 43 L.D. 343

(1914). Thus, it was clearly possible that during the 3-month period between settlement and entry a State might file an exchange application for the land so settled. The fact that no official of the GLO *knew* of the settlement as of the date of the filing of the exchange application would not serve to vest title in the State to the selected lands in derogation of the rights acquired by the settler. On the contrary, so long as the settler filed an application to enter the lands within the period afforded by the applicable rules, the application of the State was properly rejected as the lands were not available *when* the selection was filed.

It may be that BLM was misled by the fact that the precise issue involved in *Wyoming* v. *United States, supra*, was the mineral character of the selected land. Such a determination, *i.e.*, whether the land is known or believed to be mineral in character, necessarily involves consideration of a specific time frame. But it is clear that even this question is dependent not upon the facts actually known by the deciding officers or the subjective beliefs which they may have formed, but rather on the facts then available. With reference to *Wyoming* v. *United States*, under the facts available in 1912, *no one* would know or have an adequate basis upon which to found a credible belief that the selected lands were valuable for minerals. In contradistinction, insofar as the instant matter is concerned, at the time the Hyde applications were tendered to the Department, the knowledge of the fraud was clearly held by the applicants, even if by no one else.

It is true that as of the time that the Department acted to approve the applications involved in Supplement A the authorized officers were still personally unaware of the fraudulent nature of the applications. The act of approval, however, effectively vested title in the offered lands in the United States, notwithstanding the fact that these same officers could have, had they been properly informed, rejected the applications. Approval of such applications was, as the United States Supreme Court noted in *Wyoming* v. *United States, supra*, in the nature of a judicial act. *Id.* at 497. Approval of the applications involved in Supplement A was effective, even though based on false assumptions, to the same extent that an erroneous judicial decision is effective upon rendition. Unless set aside on a direct appeal or subjected to successful attack in a collateral proceeding, such a decision, even though wrong, binds the parties. As noted above, no direct appeal was ever undertaken nor did the State ever attempt to reacquire title to the offered lands in a collateral proceeding involving the United States. Thus, while it can be seen from the vantage of hindsight that the Department erroneously approved the applications, this recognition does not nullify the effectiveness of the approval to vest title to the offered land in the United States.

This analysis, however, clearly does not apply to Supplement B and C lands since the Department never exercised its judicial function to