

SHELL WESTERN E&P, INC.

IBLA 88-363

Decided April 22, 1991

Appeal from a decision of the Colorado State Office, Bureau of Land Management, declaring sodium minerals within oil shale deposits of the Green River formation reserved to the United States.

Affirmed.

1. Act of July 17, 1914--Conveyances: Reservations and Exceptions--Mineral Lands: Mineral Reservation--Oil Shale: Generally--Patents of Public Lands: Reservations

Where patents issued pursuant to the Act of July 17, 1914, as amended, reserve "all oil and gas and all shale or other rock valuable as a source of petroleum," that reservation is properly held to include sodium which occurs as an integral component of the reserved oil shale rock.

APPEARANCES: William G. Riddoch, Esq., Houston, Texas, for appellant; Lowell L. Madsen, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Shell Western E&P, Inc. (Shell), has appealed from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated March 1, 1988, concluding that the United States had reserved sodium minerals within the Green River oil shale formation underlying appellant's Bar D Ranch property in Rio Blanco County, Colorado.

The Bar D Ranch was patented to Shell's predecessors-in-interest pursuant to the Homestead Act of 1862, as amended, 43 U.S.C. § 161 (1976), 1/ after entries allowed by the Agricultural Entry Act of July 17, 1914 (1914 Act), 30 U.S.C. § 121 (1988). The 1914 Act allowed homestead entry leading to patent of:

1/ The Homestead Act was repealed by the Federal Land Policy and Management Act of 1976, 90 Stat. 2787.

Lands withdrawn or classified as [containing] phosphate, nitrate, potash, oil, gas, or asphaltic minerals, or which are valuable for those deposits * * * with a reservation to the United States of the deposits on account of which the lands were withdrawn or classified or reported as valuable, together with the right to prospect for, mine, and remove the same. [Emphasis added.]

30 U.S.C. § 121 (1988).

In 1916, these lands were classified by the Director, Geological Survey, as valuable for deposits of petroleum and nitrogen. On March 16, 1923, and January 8, 1926, the disputed land, now encompassed by the Bar D Ranch, was patented. Both patents contained the following reservation:

Also excepting and reserving to the United States all oil and gas and all shale or other rock valuable as a source of petroleum and nitrogen in the lands so patented, and * * * the right to prospect for, mine, and remove such deposits from the same upon compliance with the conditions and subject to the provisions and limitations of the Act of July 17, 1914 (38 Stat. 509). [Emphasis added.]

In 1933, the 1914 Act was amended to include reservations of sodium and sulphur. 30 U.S.C. § 124 (1988).

On March 21, 1966, BLM issued two decisions cancelling sodium prospecting permits it had issued for Bar D Ranch lands. The decisions simply stated that the lands involved "were patented with a reservation to the United States of 'rock valuable as a source of petroleum and nitrogen.'" Without further explanation, BLM concluded that the lands were not subject to sodium prospecting permits. No appeals were taken.

In April 1984, BLM issued the Draft Piceance Basin Resource Management Plan (RMP). In it, map 5 shows a central area in Ts. 1 N. and 1 and 2 S., Rs. 97 and 98 W., sixth principal meridian, marked as "Oil Shale (Multi-Mineral)." In a letter reprinted in the final version of the RMP issued March 1985, Shell questioned the inclusion of its 640-acre Bar D Ranch property in that portion of map 5 of the RMP which depicted an area of Federal priority for multiminerals development (Letter reprinted in vol. 3, Final RMP, at 42, 51). Shell objected to the implication that BLM controlled all minerals associated with the oil shale and emphasized its private ownership of Bar D Ranch minerals (including sodium minerals nahcolite, dawsonite, and halite) excluding oil shale, oil, and gas. Shell insisted that BLM did not control minerals interbedded and intermingled with the oil shale. The BLM response in the RMP was that it conceded ownership of saline minerals, but not of "oil shale minerals" (Final RMP at 183). The response did not specifically address those sodium minerals intermingled with oil shale.

BLM issued the RMP Record of Decision in May 1987. This RMP included Bar D Ranch lands in a map of a multiminerals oil shale zone (RMP Record of Decision, Map 2-B, at 2-5) on which the RMP indicated multiminerals recovery

would be encouraged, after analysis of recovery technology (RMP Record of Decision at 2-3, 2-7, 2-8, 2-10). Shell challenged the characterization of this area as "federal multiminerall" and asserted that the Federal Government had no reserved interest in sodium interbedded and intermingled with oil shale.

On March 1, 1988, BLM responded with the decision on appeal here. BLM emphasized that the 1914 Act allowed patent of lands valuable for entire deposits and concluded that "[s]odium minerals are commingled with the oil shale, within the saline zone of the same oil shale deposit, and thus are reserved to the United States by the 1914 Act." Therefore, BLM declared, "Shell owns only those sodium minerals beneath the Bar D Ranch property that are outside of the Green River Formation."

In its statement of reasons for appeal to this Board, Shell contended that this oil shale deposit is in dual ownership. Shell observed that BLM had previously recognized Shell's private hegemony over the sodium minerals underlying the Bar D Ranch, both in its response to Shell's objections in the Final RMP and in the 1966 BLM decisions holding sodium prospecting permits for cancellation in part as to Bar D Ranch lands. Shell claimed that the term "deposit" in the 1914 Act should not include more than the reserved mineral. Shell argues that no sodium was reserved because the 1914 Act did not include sodium in its list of reserved minerals. Shell also argued that, like the BLM decision, this appeal should be restricted to ownership of sodium minerals within the Green River oil shale formation only.

BLM responded that Congress, the Mineral Leasing Act, and Departmental regulations all contemplated obtaining other substances from oil shale in addition to petroleum. BLM claimed that by 1919, "[T]here was a general understanding * * * that the rock oil shale might contain mineral substances of economic interest other than the petroleum ([derived from oil shale component] kerogen) and nitrogen" (Answer at 9). Thus, when the Department reserved "all shale or other rock valuable as a source of petroleum and nitrogen," it did so with the understanding that all constituents of the rock oil shale were reserved, not just petroleum and nitro-gen. BLM asserted that the 1966 BLM decisions which declare Bar D Ranch lands not subject to sodium prospecting permits do not now prevent BLM from asserting its hegemony over sodium minerals underlying the Bar D Ranch.

[1] Appellant would interpret the 1914 Act term "deposit" to refer to only the named mineral element of the rock but does not dispute that the 1914 Act provision for reservation of oil is generic and includes oil shale. When it was enacted, the 1914 Act did not provide for separate reservations of sodium. 2/ The 1914 Act did not specify reservations of oil shale either. However, the terms of the 1914 Act have since been

2/ Congress did not amend the 1914 Act to include sodium until 1933, after appellant's patents had issued without specifically reserving sodium minerals. 30 U.S.C. § 124 (1988).

interpreted to include oil shale. Brennan v. Udall, 251 F. Supp. 12, 25 (D. Colo. 1966), aff'd, 379 F.2d 803, 805-06 (10th Cir.), cert. denied, 389 U.S. 975 (1967). The Brennan court explained that "oil," was broadly used in the 1914 Act to encompass all known sources of oil, including oil shale.

However, the language of the patents did specifically include oil shale. Further, the reservation is expansively worded, specifying rock rather than mineral. The patents reserved to the United States not just oil and gas but also "all shale or other rock valuable as a source of petroleum." We cannot construe the plain meaning of this patent language to imply that some component of the reserved oil shale rock was not reserved.

The 1914 Act was passed to permit homestead entry for agricultural purposes onto land while reserving various mineral estates to the United States. Aulston v. United States, 915 F.2d 584, 585-87 (10th Cir. 1990). Issuance of patents pursuant to the 1914 Act was intended to facilitate agricultural development, rather than private mineral development. To the extent the term "deposit" is ambiguous as used in the 1914 Act, reference to the provisions of the whole 1914 Act and its object and policy suggest that reservation of a mineral "deposit" should not be narrowly interpreted to extend only to one component of that deposit. Id. at 589. See Watt v. Western Nuclear, Inc., 462 U.S. 36, 47-49, 52 (1983).

Appellant drew support for its claim to this sodium from the history of the 1933 amendment to the 1914 Act as discussed in a Solicitor's opinion addressing Ownership of & Right to Extract Coalbed Gas in Federal Coal Deposits, 88 I.D. 538 (1981). This opinion declared that coalbed gas was reserved to the United States in lands patented under the 1914 Act with a reservation of oil and gas. In the course of this opinion, the Solicitor observed that the Department did not, in 1933, consider leases for reserved potash in lands patented under the 1914 Act to include commingled sodium, citing H.R. Rep No. 1938, 72nd Cong., 2d Sess. 2 (1933). Counsel for BLM correctly distinguishes admixtures of sodium and reserved potash from a reserved oil shale rock, which is inherently an agglomeration composed of various minerals.

Appellant asserted that BLM acknowledged its ownership of sodium minerals by its response to Shell's objections to the RMP (see infra). Although Shell insisted that BLM did not control minerals within the oil shale, we do not find that the BLM response in the 1985 RMP conceded ownership of sodium within the oil shale minerals (Final RMP at 183).

Appellant also construed the rejection of sodium prospecting permits in 1966 as recognition that the sodium was in private ownership and not subject to federal leasing. The 1966 decisions did not explain the cancellations, nor were there appeals to elucidate them. The record does not indicate which sodium deposits were the focus of the 1966 inquiry. The BLM decision on appeal here reverses the 1966 position only as to sodium which is physically associated with the oil shale.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal from the decision of the Colorado State Office is affirmed.

John H. Kelly
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge

