

STEVE H. CROOKS AND ERA LEA CROOKS

IBLA 2003-263

Decided September 27, 2005

Appeal from a decision of the Eastern States Office, Bureau of Land Management, denying an application to correct a patent. LAES 51798.

Affirmed.

1. Federal Land Policy and Management Act of 1976:
Correction of Conveyance Documents - Patents of Public
Lands: Corrections

An applicant seeking to correct a patent pursuant to 43 U.S.C. § 1746 (Supp. 2003) must establish that an error in fact was made. No error is established in the President's issuance of a certificate under the Homestead Act of 1862 to the applicant's predecessor, subject to a mineral reservation to the United States, when the patentee agreed in writing to a reservation of the mineral estate. The argument of a successor in interest to a patent that the Government made mistakes in issuing the patent 70 years previously in pursuit of the desire to reform the patent for personal gain does not constitute an "error in the conveyance document" subject to correction under FLPMA section 316.

APPEARANCES: Robert G. Nida, Esq., Alexandria, Louisiana, for appellants; John H. Harrington, Esq., Assistant Regional Solicitor, Atlanta, Georgia, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HEMMER

Steve H. Crooks and Era Lea Crooks appeal from a May 2, 2003, decision of the Acting Chief, Branch of Use Authorization, Division of Resources Planning, Use and Protection, Eastern States Office, Bureau of Land Management, denying their application for a correction of error in a patent. The decision rejected the application

on two grounds: first, that the issue had been resolved adversely to the Crooks by United States Court of Appeals for the Fifth Circuit; and, second, that the Crooks' request was based on an alleged error of law which cannot provide the basis for correction under 43 CFR 1865.0-5(b).

It is not disputed that, during 1929, Louis D. Frazier submitted an application for homestead pursuant to the Homestead Act of 1862, for lots 1, 2, 3, and portions of the NW1/4 SW1/4 sec. 10, T. 6 N., R. 3 E., in La Salle Parish, Louisiana. On June 1, 1932, the General Land Office (GLO) of the U.S. Department of the Interior requested a report under Departmental Order No. 349 regarding whether the land was valuable for oil and gas, under the Act of July 17, 1914, 30 U.S.C. § 121 (2000). (Application Ex. 5, July 20, 1932, Report.) On July 20, 1932, the U.S. Geological Survey (USGS) responded to the request and stated that the "land is in an area in which valuable deposits of oil and gas may occur under structural conditions favorable to their accumulation." Id. Accordingly, USGS concluded that the lands were valuable for oil and gas deposits within the meaning of the relevant statute. Id.

In August 1932, GLO advised Frazier of the status of the land as valuable for oil and gas and advised him that he could consent to amend his application to reserve the minerals to the United States, or he could withdraw his application. (Complaint for Accounting Pursuant to Louisiana Revised Statutes 30:10(A)(3) (Complaint) at ¶ 15, Steve H. Crooks and Era Lea Crooks, et al v. Placid Oil Company, et al, CV00-1324 A, (W.D. La. filed June 5, 2000).) ^{1/} Thereafter, on October 19, 1932, "Frazier executed a mineral waiver in which he consented to the amendment to his homestead application" by adding the mineral reservation to the United States. (Aug. 28, 2001, Memorandum Ruling at 8-9, Steve H. Crooks and Era Lea Crooks, et al v. Placid Oil Company, et al, CV00-1324 A.) On October 10, 1934, President Franklin D. Roosevelt signed and issued Patent 1072589 to Frazier for the subject lands "[e]xcepting and reserving, however, to the United States all the oil and gas in the lands so patented * * * subject to the provisions and limitations of the Act of July 17, 1914 (38 Stat. 509)." (Application Ex. 1, Patent 1072589.)

Effective December 1, 1951, the Department of the Interior issued to Placid Oil Company oil and gas lease 124415 exclusively for the mineral lands reserved to the United States by the patent. The lease was subsequently held by Louisiana Hunt Petroleum Corporation and Hunt Petroleum Corporation. Placid Oil Company and/or its successors have successfully drilled and completed wells on the lease and produced therefrom, paying royalties to the United States.

^{1/} The Crooks omit a number of facts relevant to the background of this appeal in their application. We therefore take these facts from information they presented in their complaint in Federal court, as well as the Federal court decision, as discussed below.

By transactions and litigation not relevant here, it is undisputed that the Crooks acquired the land subject to the Frazier patent no later than 1985. (Complaint ¶ 3.) In 1987, Steve H. Crooks contacted the Department of the Interior and asserted his ownership of the surface estate. He requested to acquire the Government's mineral estate "in order to attract investors to develop the tract as a potential hunting reserve," suggesting that he preferred not to have to contend with the oil and gas companies. (May 6, 1987, letter from Crooks to BLM.)

On November 14, 1998, BLM issued to Crooks a decision entitled "Application for Conveyance of Federally Owned Mineral Interests Rejected." Crooks did not appeal the decision refusing his request to purchase the mineral estate.

On June 5, 2000, in a Complaint filed in the United States District Court for the Western District of Louisiana, the Crooks (and a predecessor-in-interest to the patent, Thurston M. Beadle) sued Placid Oil Company, Louisiana Hunt Petroleum Corporation, and Hunt Petroleum Corporation. They asserted that pursuant to the Confirmation Act of 1891, as interpreted by the Supreme Court in Stockley v. United States, 260 U.S. 532 (1922), the GLO had possessed no authority in 1932 to inquire into the mineral status of the land subject to Frazier's homestead patent application. They asserted that the mineral reservation in the patent issued to Frazier was therefore null and void and that they should be found to own the mineral estate. They demanded that the Federal lessees pay the Crooks and Beadle for all production from the property, presumably during their respective tenures on the surface estate.

The lessees filed a motion to dismiss for failure to include the United States as a party, and this motion was considered by the Court by Order dated October 4, 2000. Pursuant to the order, on November 3, 2000, the Crooks submitted a First Amended Complaint joining the United States and Secretary of the Interior Bruce Babbitt (later Gale Norton). In their amended complaint, the Crooks demanded "a writ of mandamus directed to [the Secretary], commanding [her] to issue an amended and corrected patent to Louis D. Frazier, eliminating the [mineral] reservation in favor of the United States * * * upon compliance with the conditions and subject to the provisions of the Act of July 17, 1914." (Amended Complaint ¶ 50.)

The Government moved to dismiss, explaining that the only legal basis for the Amended Complaint could be the Quiet Title Act of 1972, 28 U.S.C. § 2409(a) (2000), which required any such action to be brought within 12 years of the date the action accrued. The Crooks objected to this motion, asserting that they only sought "an accounting" of the money allegedly owed them from production of the oil and gas on the subject land. See Aug. 28, 2001, Memorandum Ruling at 3.

The Court issued its ruling dismissing the Complaint as untimely under the Quiet Title Act. Citing the facts surrounding Frazier’s waiver of mineral rights, the District Court stated Frazier had actual knowledge of the United States’ adverse interest in the property well over 66 years before and that the Crooks could not claim they were unaware of the date of accrual of any cause of action. Id. at 9. Moreover, the Court noted that Steve H. Crooks’ 1987 letter made abundantly clear that the Crooks were aware of the mineral reservation to the United States at the time. Id. Accordingly, the Court dismissed the Complaint as untimely filed.

The Crooks appealed. The United States Court of Appeals for the Fifth Circuit affirmed the District Court in a single sentence “for essentially the reasons given by the district court.” Steve H. Crooks and Era Lea Crooks, et al v. Placid Oil Company, et al, No. 01-31176 (5th Cir.), Order dated Sept. 9, 2002.

On April 4, 2003, the Crooks filed an application for correction of error in the patent, serialized by BLM as LAES 51798. The Crooks asserted three arguments in support of their claim that there was an error of fact that must be corrected. First, they asserted that Frazier’s homestead application dated January 26, 1929, did not state on its face that it was subject to the Act of July 17, 1914. Thus, they claimed, “the Government committed factual error in subsequently making Frazier’s entry subject to” that Act.^{2/} Second, they argued that the 1929 application established a vested right equivalent to patent, and that the United States was not free to make a determination as to whether it was valuable for minerals thereafter in 1932. (Application at 2, citing Stockley v. United States, 260 U.S. 532 (1922).) They argued that the United States’ issuance of the patent with the mineral reservation was a “factual error.”^{3/} Third, they claimed that the 1932 USGS finding that the land was valuable for oil and gas was not sufficient to constitute such a finding, citing a Supreme Court case which held that a finding of mineral value, subsequent to issuance of a patent which did not reserve the mineral estate, did not justify the United States’ efforts to annul the patent. (Application at 3, citing Diamond Coal & Coke v. United States, 223 U.S. 236 (1914).)

On May 2, 2003, BLM issued its decision entitled “Application Rejected.” Citing the District Court’s ruling, BLM stated that the

^{2/} The Crooks submitted six clearly tabbed attachments to their application. Notably, they did not submit the 1929 application to BLM, nor did they submit it to the Board.

^{3/} As with the omission of the 1929 application, the Crooks omitted the fact, addressed by the District Court, that Frazier expressly and knowingly waived interest in the mineral estate, and by omitting reference to this aspect of the patent’s history, failed to address its significance.

application to correct an alleged error in the patent seeks to accomplish administratively what the applicants attempted but failed to accomplish in their quiet title action against the United States and its mineral lessee. The doctrine of *Res Judicata* provides that once a matter is judicially decided, it is finally decided. For this reason, the Crooks may not reopen the question of mineral ownership in the lands included within patent No. 1072589.

Even in the absence of the ruling in Crooks v. Placid Oil Co., the application could not be granted. The authority to correct errors in a patent extends only to mistakes of fact and not mistakes of law, 43 CFR 1865.0-5(b), Bill G. Minton, 91 IBLA 108 (1986). The application in this case rests on the proposition that Frazier's right to receive an unencumbered patent vested prior to the mineral adjudication by the [GLO]. While the applicant's position is incorrect, it is not necessary to delve into the merits. The mere recitation of their position demonstrates that their claim of error is one of law -- not fact.

Therefore, for these reasons, the application of Steve H. Crooks and Era Lea Crooks does not meet the requirements to be eligible for the correction of conveyance documents under Section 316 of FLPMA and LAES 51798 is hereby rejected.

(Decision at 2.)

The Crooks appealed. In their Statement of Reasons (SOR), they argue that the conclusion of the District Court can be res judicata only with respect to those issues actually decided by the court. In this case, they argue, the court decided only that a request to quiet title was untimely, and it cannot be construed to have addressed the question of patent correction. (SOR at 2.) They argue that a "question of fact is involved in the issue of whether the subject land had been reported as valuable for minerals before the original patentee, Louis D. Frazier, [ac]quired vested rights in it. The question of whether the land was actually valuable for minerals in 1932 is factual as well." Based on these assertions, they argue that BLM's decision failed to address their contention that errors of fact "did interdict and render erroneous the inclusion of the mineral reservation in the patent." Id. at 3.

We agree with the Crooks' general argument that the District Court ruling, as subsequently affirmed by the Court of Appeals, can only be found to be res judicata as to those issues it squarely addressed. The question of whether the Crooks could sue to quiet title to the mineral estate has been resolved with finality, and cannot be resurrected here in the form of a request to correct a patent. Conversely, it should be plain that issues regarding the application for correction of the patent were not

resolved in that case and the ruling cannot be found to have a preclusive effect on consideration of such issues here.

Such general assertions regarding the impact of the Federal court rulings, however, do not squarely answer questions regarding the nature of the Crooks' administrative assertions to the agency. Whether the Crooks have actually presented a proper application for patent correction determines whether consideration of their application is precluded by res judicata principles. BLM is correct to point out that, if, in fact, the Crooks' application is nothing more than an attempt, in the guise of a patent correction application, to challenge the United States' title to real property (the mineral estate), then it has been conclusively determined to be time-barred by the Federal courts. We note as well that such an action may not be brought to BLM as an administrative matter, but can only be brought in the United States district courts. 28 U.S.C. §§ 2409(a)-(k) (2000). Accordingly, we examine the authority under which the Crooks allegedly seek patent correction.

Section 316 of the Federal Land Policy and Management Act, 43 U.S.C. § 1746 (Supp. 2003), grants the Secretary of the Interior the authority to correct patents or documents of conveyance disposing of public lands under other Federal statutes "where necessary in order to eliminate errors." This authority has been delegated to BLM, which holds the discretionary authority to correct patents of public land to eliminate mistakes of fact as to description of land conveyed by the patent document. Ramona and Boyd Lawson, 159 IBLA 184, 190 (2003), citing 43 CFR 1865.0-1 and 1865.0-5(b); Foust v. Lujan, 942 F.2d 712, 714-17 (10th Cir. 1991), cert. denied sub nom., Northern Arapaho & Shoshone Indian Tribes of Wind River Indian Reservation v. Foust, 503 U.S. 984 (1992); Mary D. Hancock, 150 IBLA 347, 350 (1999); Ben R. Williams, 57 IBLA 8, 12 (1981). BLM has promulgated regulations implementing this authority at 43 CFR Subpart 1865.

An examination of the statute, BLM regulations, and our precedent makes clear that the purpose of section 316 is to permit the Secretary, as an administrative matter, to clear up errors in the description of land conveyed by a patent. Congress did not give the Secretary, through this statutory provision, the otherwise judicial authority to issue determinations in disputes between the Government and a private citizen over the ownership of a tract of property.

Departmental regulation 43 CFR 1865.0-1 provides that section 316 "affords to the Secretary of the Interior discretionary authority to correct errors in patents." An "error" is defined as "the inclusion of erroneous descriptions, terms, conditions, covenants, reservations, provisions and names or the omission of [such] * * * as a result of factual error. This term is limited to mistakes of fact and not law." 43 CFR 1865.0-5(b). Upon determining the existence of such a mistake of fact "and that the

requested relief is warranted and appropriate,” the Secretary has discretion to correct the patent or conveyance document. 43 CFR 1865.1-3.

This Board has had several recent occasions to explain how the Secretary exercises her discretion to correct a patent. To justify an application for a correction,

the party applying for amendment must demonstrate an error in the description of the land in the patent which results in the inclusion of land the patentee and the United States had not intended to be conveyed and/or excludes land the patentee and the United States had intended to be conveyed. If both the United States and the applicant were mistaken regarding the boundaries or legal description, it would be a correctable mistake of fact. Foust v. Lujan, 942 F.2d at 715; see Mary D. Hancock, 150 IBLA at 351-52; Frank L. Lewis, 127 IBLA 307, 309 (1993); George Val Snow (On Judicial Remand), 79 IBLA 261, 262 (1984). This showing of error is the legal prerequisite for correction, and “it must clearly appear that an error was, in fact, made. Otherwise, an application to amend would be barred as a matter of law.” Ben R. Williams, 57 IBLA [8,] 12 [(1981)].

If an error exists, the Department will correct the patent if substantial Government or private interests are not unduly prejudiced, because substantial equities of the applicant will thereby be preserved. Mary D. Hancock, 150 IBLA at 351; Mantle Ranch Corp., 47 IBLA 17, 37-38, 87 I.D. 143, 153-54 (1980). Thus, equity and justice must also favor correction. Mary D. Hancock, 150 IBLA at 351; Frank L. Lewis, 127 IBLA at 309-10; George Val Snow (On Judicial Remand), 79 IBLA at 262; Ben R. Williams, 57 IBLA at 13. The ultimate burden falls on the party seeking the correction. George Val Snow (On Judicial Remand), 79 IBLA at 264.

Ramona and Boyd Lawson, 159 IBLA at 190 (emphasis added).

In Ray M. Chavarria, 165 IBLA 161, 182 (2005), we explained the application of this law in a case similar to the one before us. We stated:

[I]n a case involving what was contended to be an error of law, Walter and Margaret Bales Mineral Trust, 84 IBLA 29 (1984), appellant sought to have coal reservations removed from several patents. Appellant alleged in that case that the Department had made mistakes of law in including the reservations in the patents in question. Assuming such legal mistakes could have been shown, they would “not be correctable pursuant to section 316 of FLPMA, given the regulatory limitation” that

corrections are limited to mistakes of fact and not of law. See 43 CFR 1865.0-5(b). 84 IBLA at 32.

Turning to the Crooks' application, we find that it fails to identify any mistake of fact regarding the patent as it was issued to Frazier. Rather, despite the Crooks' failure to submit or acknowledge critical documents, the District Court and their own Complaint at ¶ 15 made clear that Frazier was fully aware that the United States intended to reserve the mineral estate, and chose to accept a patent with an express reservation. The documents make clear that the Government was aware of the possibility of oil and gas reserves on the land by 1932, and wanted to keep them and thus deliberately issued a patent in 1934 whereby it did so. There is no issue here of either party to the patent laboring under a misimpression as to any fact about what was conveyed to Frazier and what was reserved to the United States.

The Crooks' arguments relating to an "interest" in the patent which vested by 1929, 5 years before the patent issued, are purely legal, and therefore cannot be remedied by a patent correction under section 316 of FLPMA. Ray M. Chavarria, 165 IBLA at 182; Ben R. Williams, 57 IBLA at 12. Moreover, these arguments serve no interest of the Secretary in correcting a disputed patent term to represent the intent of the parties to it. Rather, they constitute an assertion that the patent contains an express term, to which the parties agreed, that, by law, it should not have contained. The Crooks thus claim that the Government made mistakes in issuing the patent 70 years ago, in pursuit of their desire to alter the terms of the patent for personal gain. This does not constitute an "error in the conveyance document" subject to correction under FLPMA section 316, but rather is nothing other than a request to reform the patent which could only be remedied under the Quiet Title Act. That issue has been resolved and the Court's decision is res judicata.

Finally, even if we could fit the Crooks' application into the terms of section 316 of FLPMA such that we would consider it to assert an identifiable mistake of fact on the part of the Government at the time the patent was issued, we would not reverse BLM's exercise of discretion to reject the application. The Crooks have failed to demonstrate any basis in equity or justice that favors correction. Ramona and Boyd Lawson, 159 IBLA at 190. Nor have they shown that their requested relief is "warranted and appropriate." 43 CFR 1865.1-3. To the contrary, they can show only that, having received a property interest in 1985, and having become aware no later than 1987 that it was a surface interest subject to a mineral reservation in the United States, it would be to their financial advantage to have obtained the mineral royalties or other proceeds from oil and gas produced by valid Federal mineral lessees. No such windfall was contemplated or authorized by section 316 of FLPMA, and we will not reverse BLM for refusing to allow the statutory purpose to be so perverted.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Lisa Hemmer
Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge