



D. L. WIEST ENTERPRISES, INC.

178 IBLA 116

Decided: September 9, 2009



United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

D. L. WIEST ENTERPRISES, INC.

IBLA 2009-194

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Appeal of a decision by the California State Office, Bureau of Land Management, declaring four lode mining claims null and void *ab initio* because they were located on patented land. CAMC 294310, CAMC 294312, CAMC 294314, and CAMC 294315.

Affirmed as modified.

1. Patents of Public Lands: Generally

The determination whether land to be patented is mineral or “not mineral” in character was made by the Land Department at the time a patent was issued and its issuance is conclusive evidence of the nonmineral character of the land. A patent obtained by fraud is voidable, not void, and an action to annul it can be maintained by the Government, but a patent cannot be successfully attacked by strangers who had no interest in the land at the time the patent was issued and were not prejudiced by it.

2. Mining Claims: Lands Subject to

Patented lands reacquired by the United States are not by mere force of the reacquisition restored to the public domain and subject to the location of mining claims. Absent legislation or authoritative directions to the contrary, they remain land acquired for a special use and are not open to location and exploitation under the mineral laws.

APPEARANCES: David L. Wiest, *pro se*, Riverside, California.

OPINION BY ADMINISTRATIVE JUDGE PRICE

David L. Wiest, on behalf of D.L. Wiest Enterprises, Inc., has appealed a March 26, 2009, decision of the California State Office, Bureau of Land Management

(BLM), declaring the Hill Top 1 (CAMC 294315), the Hill Top 2 (CAMC 294314), the Hill Top 4 (CAMC 294312), and the Hill Top 6 (CAMC 294310) lode mining claims null and void *ab initio* because they were located on land patented under Rail Road Grant Patent No. 901413 issued on March 13, 1923, without a reservation of the minerals to the United States.¹

For reasons explained below, the decision is affirmed as modified.

BLM correctly ascertained that its Master Title Plat (MTP) for T. 6 S., R. 4 E., San Bernardino Meridian (SBM), Riverside County, California, shows that section 21, within which the claims were located, was transferred from Federal ownership by Patent No. 901413. A copy of the patent in the casefile establishes that the section, along with other land, was conveyed to the Southern Pacific Railroad Company by President Warren G. Harding on March 13, 1923, pursuant to the Act of July 27, 1866, ch. 278, 14 Stat. 292, and the Act of March 3, 1871, ch. 122, 16 Stat. 573.

[1] Land conveyed under the Act of July 27, 1866, was to be “not mineral” in character. Ch. 278, § 3, 14 Stat. 292, 294 (1866). The determination whether land was mineral or nonmineral was made by the Land Department at the time a patent was issued and its issuance is conclusive evidence of the nonmineral character of the land. *Burke v. Southern Pacific Railroad Co.*, 234 U.S. 669, 691-92 (1914); *see Barden v. Northern Pacific Railroad Co.*, 154 U.S. 288, 329-31 (1894); *Smelting Co. v. Kemp*, 104 U.S. 636, 640-41 (1881). A patent obtained by fraud is voidable, not void, and an action to annul it can be maintained by the Government, but a patent “cannot be successfully attacked by strangers who had no interest in the land at the time the patent was issued and were not prejudiced by it.” *Burke v. Southern Pacific Railroad Co.*, 234 U.S. at 692. Thus, when Patent No. 901413 was issued on March 13, 1923, title to both the surface and subsurface estates passed to the railroad, regardless of whether minerals were actually present. *Gold-West Industries, Inc.*, 90 IBLA 372, 373-74 (1986); *Moise and Leon Berger*, 82 IBLA 253, 255 (1984); *Norman A. Whittaker*, 8 IBLA 17, 19 (1972).

On appeal Wiest asserts that BLM owns the land. In support, he has provided copies of a portion of a 2007 BLM Surface Management Status map for the Palm Springs area and a recorded grant deed, dated December 18, 2000, to establish that two parcels consisting of the west and east halves of sec. 21, T. 6 S., R. 4 E., SBM,

¹ The copies of location certificates for the claims in the casefile BLM submitted are stamped as filed on Feb. 26, 2009, but are not individually marked with CAMC numbers. The numbers for the claims are taken from the decision on appeal. By a separate letter, also dated Mar. 26, 2009, BLM informed Wiest that the Hill Top 3 (CAMC 294313) and the Hill Top 5 (CAMC 294311) lode mining claims were partially located on land patented under Rail Road Grant No. 901413.

were acquired by purchase by the Forest Service, U.S. Department of Agriculture, pursuant to authority granted by the Act of June 15, 1938, ch. 438, 52. Stat. 699. Although Patent No. 901413 is recorded on the MTP and the Historical Index (HI) for the township, no acquisition in 2000 is reflected in those land records.² The deed states that the conveyance included “the tenements, hereditaments and appurtenances thereto belonging, or in anywise appertaining; and the reversion and reversions, remainder, rents issues and profits thereto subject to restriction, covenants and easements of record,” but does not specifically refer to minerals or the subsurface estate. Without the chain of title documenting conveyances that may have occurred between March 13, 1923, and the purchase of the land in 2000, it is impossible to ascertain whether the Federal government now owns any or all of the mineral estate that could be subject to appropriation under the mining laws.

[2] Further documentation of title is not needed, however, because there is a more significant reason that the mining claims were void *ab initio*. Assuming the authenticity of the deed Wiest submitted and that it conveyed both the surface and subsurface estates, the land on which the claims were located was acquired for a prescribed purpose and, consequently, was not open to location under the statutes generally known as the Mining Law of 1872, codified at 30 U.S.C. §§ 22-54 (2006). The subject was addressed in *Rawson v. United States*, 225 F.2d 855, 856 (9th Cir. 1955), *cert. denied*, 350 U.S. 934 (1956), in regard to a mining claim located in 1951 on land that had been patented as a homestead in 1915 and purchased by the United States in 1937. The Ninth Circuit Court of Appeals explained:

Under the land laws mineral entries may be made only on lands forming part of the public domain, that is, public lands of the United States subject to entry, sale, or other disposal pursuant to general law. . . . It may be stated as a universal proposition that patented lands reacquired by the United States are not by mere force of the reacquisition restored to the public domain.^[3] Absent legislation or

² The HI may be out-of-date. Its most recent entry refers to the designation of the Pyramid Peak Planning Area by the California Wilderness Act of 1984. Pub. L. No. 98-425, § 102(a)(3), 98 Stat. 1619, 1624 (1984).

³ The term *acquired lands*, as distinguished from *public domain lands*, has traditionally referred to those lands “in federal ownership which . . . hav[e] been obtained by the Government by purchase, condemnation, or gift, or by exchange for such purchased, condemned or donated lands, or for timber on such lands.” *Phillips Petroleum Co.*, 10 IBLA 275, 276 (1973). There are situations under specific statutes, not relevant here, in which certain acquired lands are open to entry and appropriation under the mining laws. *See Junior L. Dennis*, 61 IBLA 8, 13-15 (1981).

(continued...)

authoritative directions to the contrary, they remain in the class of lands acquired for special uses, such as parks, national monuments, and the like—areas which it could not rationally be argued remain open to location and exploitation under the mineral laws.

Rawson v. United States, 225 F.2d at 858 (footnote and citations omitted). The general rule has been incorporated into the Department's regulations. 43 C.F.R. § 2091.1(b). It is only when the United States has "indicated that the lands are held for disposal under the general land laws that a mineral location might be filed." *Thompson v. United States*, 308 F.2d 628, 632 (9th Cir. 1962); see *Oklahoma v. Texas*, 258 U.S. 574, 600 (1922); *Junior L. Dennis*, 61 IBLA at 15 (the analysis focuses on the reasons the United States acquired title and the statutory authority by which title was obtained).

The Act of June 15, 1938, under which section 21, T. 6 S., R. 4 E., SBM, was acquired, authorized the purchase of land within the San Bernardino and Cleveland National Forests within Riverside County for the purpose of managing the land "to minimize soil erosion and flood damage." Ch. 438, 52. Stat. 699 (1938).⁴ Section 21 was purchased by the Forest Service and the surface management map appellant has provided shows the section shaded in green, suggesting that it is administered by that agency. Assuming that the Federal government acquired the mineral estate, the stated purpose for the purchase precludes finding that the land became available for the location of mining claims.⁵ Consequently, BLM's decision

³ (...continued)

Further, lands acquired under sections 205 and 206 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1715 and 1716 (2006), are expressly deemed "public lands." 43 U.S.C. § 1715(c) (2006). The lands at issue here were acquired under other authority, and the FLPMA provisions do not apply.

⁴ The deed recites that the statute was amended by the Act of Aug. 3, 1956, 70 Stat. 1032 (the Department of Agriculture Organic Act of 1956); the Act of Sept. 3, 1964, 78 Stat. 897 (Pub. L. No. 88-578, the Land and Water Conservation Fund Act of 1965); the Act of Oct. 2, 1968, 82 Stat. 919 (Pub. L. No. 90-543, the National Trails System Act); Title V of the Department of the Interior and Related Agencies Appropriations Act, 1998, Pub. L. No. 105-83, 111 Stat. 1543, 1610 (1997); and the Consolidated Appropriations Act for Fiscal Year 2000, Pub. L. No. 106-113, 113 Stat. 1501 (1999) (Appendix C at 1501A-135, the Department of the Interior and Related Agencies Appropriations Act, 2000). Although the subsequent legislation provides for the expenditure of funds and the acquisition of land, it does not expressly refer to or amend the 1938 statute.

⁵ We note also that "all lands of the United States within the exterior boundaries of
(continued...)

that the four claims were null and void *ab initio* is affirmed on the alternative basis that, as land acquired for a specified purpose, section 21 was not subject to the location of claims under the Mining Law of 1872. *Northern Nevada Natural Mining*, 161 IBLA 318, 320-21 (2004); *Ted Thompson*, 98 IBLA 251, 252 (1987); *Roberts and Koch*, 95 IBLA 239, 242-43 (1987) (oil and gas leasing); *Silver Buckle Mines, Inc.*, 84 IBLA 306, 308-09 (1985).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the March 26, 2009, decision of the California State Office is affirmed as modified.

/s/
T. Britt Price
Administrative Judge

I concur:

/s/
Geoffrey Heath
Administrative Judge

⁵ (...continued)
national forests which were or hereafter are acquired for or in connection with the national forests or transferred to the Forest Service . . . for administration substantially in accordance with national forest regulations, policies, and procedures [with two exceptions not relevant here] are made subject to the Weeks Act of March 1, 1911 (36 Stat. 961), as amended, and to all laws, rules, and regulations applicable to national forest lands acquired thereunder [subject to two further exceptions not relevant to this appeal].” 16 U.S.C. § 521a (2006). Lands acquired under the Weeks Act are “permanently reserved, held, and administered as national forest lands.” *Id.* § 521. The Secretary of Agriculture is authorized to permit prospecting, development, and utilization of the mineral resources of the lands acquired under [the Weeks Act] upon such terms and for specified periods or otherwise, as he may deem to be for the best interests of the United States.” *Id.* § 520. Absent such permission, a mining claim is properly declared null and void *ab initio*. *Mark D. Miller*, 174 IBLA 398, 403-04 (2008), and cases cited.