



INTERIOR BOARD OF INDIAN APPEALS

Oranna Bumgarner Moosman Felter v.  
Western Regional Director, Bureau of Indian Affairs

63 IBIA 322 (09/13/2016)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
801 NORTH QUINCY STREET  
SUITE 300  
ARLINGTON, VA 22203

ORANNA BUMGARNER MOOSMAN	)	Order Affirming Decision
FELTER,	)	
Appellant,	)	
	)	
v.	)	Docket No. IBIA 15-101
	)	
WESTERN REGIONAL DIRECTOR,	)	
BUREAU OF INDIAN AFFAIRS,	)	
Appellee.	)	September 13, 2016

Oranna Bumgarner Moosman Felter (Appellant), appeals to the Interior Board of Indian Appeals (Board) from a June 22, 2015, decision (Decision) of the Western Regional Director (Regional Director), Bureau of Indian Affairs (BIA), concluding that Appellant does not own mineral interests in lands on the Uintah and Ouray Indian Reservation, either in an individual capacity or as the Administratrix of the estate of her mother, Elizabeth C. Bumgarner (Bumgarner).<sup>1</sup> Appellant claims that the mineral estate underlying the Strawberry Property was conveyed to her mother by a patent for the surface land, which included the provision “subject to the reservation of all oil, gas and other minerals to the United States in trust for the beneficial owners thereof.” The term “beneficial owners,” Appellant argues, referred to Bumgarner and her heirs and assigns. The Regional Director disagreed with Appellant’s interpretation of the patent and denied Appellant’s claim, except to the extent of her ownership of shares in the Ute Distribution Corporation (UDC) for minerals held in trust and in common with the Ute Indian Tribe of the Uintah and Ouray Reservation (Tribe).

On appeal to the Board, Appellant maintains that the plain language of the patent conveyed the mineral interests in the Strawberry Property to Bumgarner, and that the Regional Director erred in concluding that the mineral estate was reserved to the United States for the benefit of members of the Tribe and the UDC. More specifically, Appellant challenges the authority of the UDC to jointly manage the mineral interests of the mixed-

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<sup>1</sup> The property at issue in this appeal is known as the Strawberry Property, and is described as Sections 13, 14, 23, 24, and 26, Township 4 South, Range 11 West, Uintah Special Meridian, Utah, in the patent issued to Appellant’s mother.

blood Indians, and argues that the UDC has no right to receive revenues from the mineral estate of the Strawberry Property.

The crux of this appeal, however, is the question of whether Bumgarner, and Appellant as heir to her estate, had an individual ownership interest in the mineral estate based on the patent issued to her for the property. And it is clear to the Board, based on the wording of the patent and the history of the Strawberry Property, that the patent for the land did not also convey exclusive mineral rights to Bumgarner. Thus we affirm the Regional Director's denial of Appellant's request for a deed to the mineral estate of the Strawberry Property because the mineral estate was reserved to the United States in trust for the benefit of the Tribe and the mixed-blood group of Indians.

### **History of the Strawberry Property**

On May 27, 1902, Congress authorized the Secretary of the Interior (Secretary) to distribute land on the Uintah Indian Reservation to families of the Uintah and White River tribes of the Ute Indians, and ordered that the remaining unallotted lands be restored to the public domain and opened for sale "for the benefit of said Indians." Act of May 27, 1902, 32 Stat. 245, 263-64 (1902 Act). Three years later, Congress authorized the President to "set apart and reserve any reservoir site or other lands necessary to conserve and protect the water supply for the Indians or for general agricultural development." Appropriations Act of March 3, 1905, 33 Stat. 1048, 1070 (Administrative Record (AR) 1).<sup>2</sup> The President subsequently proclaimed "that certain lands in the Uintah Indian Reservation are hereby withdrawn from disposal," including the Strawberry Property, which was reserved for use as a reservoir site. Proclamation 589, Aug. 3, 1905 (AR 2-3).<sup>3</sup> But in 1910, "because of the existence thereon of materials suitable for the construction of the Strawberry dam," the Secretary determined that the Strawberry Property should be withdrawn under the statutory authority of the Reclamation Act,<sup>4</sup> "in order to reserve [it] from other disposition

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<sup>2</sup> The electronic administrative record is organized by both document number and bates stamp. Because multiple documents may be housed under the same document number, we will cite to each document by bates stamp.

<sup>3</sup> Because the President set aside more land than was necessary for the reservoir site, many of the reserved lands were later restored to their prior ownership status. Proclamation 591, Aug. 14, 1905 (AR 5). The Strawberry Property did not change status at that time and remained withdrawn by executive order.

<sup>4</sup> The National Reclamation Act of June 17, 1902, 32. Stat. 388, authorized the Secretary to "withdraw from public entry the lands required for any irrigation works" for "the  
(continued...)

in the event of [its] release from the [August 3, 1905] Executive withdrawal.” Order of the Secretary of the Interior, Oct. 20, 1910 (AR 6).

In 1945, the Secretary, as authorized by Congress, undertook to settle the legal status of opened reservation lands that had not been disposed-of (i.e., sold) pursuant to the 1902 Act. *See* 10 Fed. Reg. 12409 (Oct. 2, 1945) (1945 Order) (AR 7); *see also* Act of June 18, 1934, 48 Stat. 984 (authorizing the Secretary to restore surplus lands to tribal ownership). The Secretary determined that the nearly “217,000 acres of unallotted lands” that had not been disposed-of required closer administrative control for conservation purposes, and concluded “that restoration to tribal ownership of all lands which are now or may hereafter be classified as undisposed-of opened lands . . . will be in the public interest, and the said lands are hereby restored to tribal ownership for the use and benefit of the Ute Indian Tribe.” *Id.*

At the request of the Bureau of Land Management, the Office of the Solicitor (Solicitor) issued an opinion considering whether the 1945 Order restored to tribal ownership “the minerals reserved to the United States under patents issued for the surface of opened lands.” Solicitor’s Opinion, M-34836, 59 I.D. 393, 393 (1947) (AR 7-1). The Solicitor reviewed the legal history of the reservation land, and concluded that when the 1902 Act opened lands to the public domain, “legal title to the opened lands passed to the United States,” but “beneficial title remained in the Indians.” *Id.* at 394. The Solicitor also concluded that the 1902 Act did not divest the Indians of beneficial title to the mineral estate, as “the beneficial interest of the Indians could be terminated only by or under authority of the Congress,” and the 1902 Act was silent with regard to the disposition of the mineral estate. *Id.* Ultimately, the Solicitor opined that the Secretary’s restoration of the undisposed-of lands to tribal ownership also restored “the minerals underlying the patented lands within the Uintah and Ouray Indian Reservation . . . to tribal ownership.” *Id.* at 396. “[T]he beneficial title to the minerals,” the Solicitor repeated, “has always been in the Indians.” *Id.*

Following the 1945 Order, a split arose between groups within the Tribe considered as the “full-blood” and “mixed-blood” members, as to whether continued Federal oversight of tribal lands and other assets was necessary. S. Rep. No. 1632, at 5 (1954).<sup>5</sup> A Senate

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storage, diversion, and development of waters for the reclamation of arid and semiarid lands in the said States and Territories,” including Utah. 32 Stat. at 388.

<sup>5</sup> A full-blood member was defined as any member who possessed one-half degree of Ute Indian blood, and a total of more than one-half degree of Indian blood. Ute Partition and Termination Act of August 27, 1954, 68 Stat. 868, 868 (UPA). A mixed-blood member

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Report found that the mixed-blood members advocated for termination of Federal supervision over their property, but the full-blood members believed that they were unprepared to end the trust relationship. *Id.* So on August 27, 1954, Congress passed the Ute Partition and Termination Act (UPA) to facilitate partition and the distribution of tribal assets between the mixed-blood and full-blood members of the Tribe.<sup>6</sup> 68 Stat. at 868.

According to Congress, “[a]n essential provision of the [UPA was] the division between the two groups, on the basis of their relative numbers, of all tribal assets, *except oil, gas, and mineral rights* . . . . These undivided assets will continue to be owned and administered jointly by the two groups.” S. Rep. No. 1632, at 6 (emphasis added). Section 10 of the UPA, in turn, makes clear that “all gas, oil, and mineral rights of every kind . . . shall be managed jointly by the Tribal Business Committee and the authorized representatives of the mixed-blood group,” subject to the supervision of the Secretary. 68 Stat. at 873. The UPA requires that the net proceeds derived from the mineral estate of tribal lands, minus costs chargeable to management operations, be distributed among the full-blood and mixed-blood members “in direct proportion to the number of persons comprising the final membership roll of each group and without regard to the number of persons comprising each group at the time of the division of such proceeds.”<sup>7</sup> *Id.*

For the division of tribal lands, § 9 of the UPA authorized the Tribal Business Committee and the authorized representative of the mixed-blood members of the Tribe, “acting jointly” and with approval of the Secretary, “to sell, exchange, dispose of, and convey to any purchaser deemed satisfactory . . . any or all of the lands of [the] tribe” listed in the Act. *Id.* at 869. The Strawberry Property was not listed among the lands opened to disposition. *See id.* at 872 (listing ranges in Township 4 South).

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was defined as any member who did not possess sufficient Indian or Ute Indian blood to meet the definition of a full-blood member. *Id.*

<sup>6</sup> According to the Senate Report, the original bill effectuating partition between the full- and mixed-blood members was drafted by the Tribe, and introduced at the request of the Tribe. S. Rep. No. 1632, at 7 (Comments of the Assistant Secretary of the Interior).

<sup>7</sup> On March 27, 1956, notice of the final rolls of the mixed-blood and full-blood members of the Tribe was submitted by the Secretary. 21 Fed. Reg. 2208 (Apr. 5, 1956) (AR 20). Effective August 27, 1961, the trust relationship between the United States and the mixed-blood members was terminated. Notice of Termination of Federal Supervision Over the Affairs of the Individual Mixed-Blood Members, 26 Fed. Reg. 8042 (Aug. 24, 1961) (AR 32-3).

On August 26, 1960, the Secretary ordered that the Strawberry Property be “restored to tribal ownership for the use and benefit of the Ute Indian Tribe . . . and added to and made a part of the existing reservation.” 25 Fed. Reg. 8485, 8485-86 (Sept. 2, 1960) (AR 33-34). The following month, a fee simple patent was issued “according to the provisions of the Act of August 27, 1954,” to Bumgarner for the 3,200 acre Strawberry Property “together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature . . . and to her heirs and assigns forever.” Patent No. 1212876, Sept. 20, 1960 (Bumgarner Patent) (AR 35). The patent was issued “subject to the reservation of all oil, gas and other minerals to the United States in trust for the beneficial owners thereof, their heirs and assigns.” *Id.*

On December 14, 1970, the United States District Court for the Central District of Utah, on mandate of the Court of Appeals for the Tenth Circuit, ordered that the Strawberry Property be conveyed from the estate of Bumgarner back to the United States in trust for the Tribe. Order on Mandate, No. C-172-67 (C.D. Utah Dec. 14, 1970) (AR 36-38). This conveyance was also made “[s]ubject to reservation in the United States of all minerals and mineral rights.” *Id.*

### **Procedural History**

On May 20, 2014, over 40 years after the property had been returned to tribal ownership, Appellant mailed a letter to the Office of Trust Services (OST) and the Regional Director claiming to have an ownership interest in the mineral estate of the Strawberry Property. Letter from Appellant to OST, May 20, 2014 (AR 39-42). Appellant stated that “the Senior Petroleum Engineer for the Bureau of Land Management at the Vernal office” told her that the patent for the Strawberry Property conveyed the mineral estate to the United States in trust for the benefit of Bumgarner, the “beneficial owner” of the property, *see id.* at 1-2, and alleged that as an heir to Bumgarner, this conveyance entitled Appellant to the “3,200 shares of oil, gas, and other minerals,” *see id.* at 2. She requested that the mineral estate be “released from trust” and that a “Mineral Deed” be made in favor of Bumgarner, “the only legal owner,” and objected to the current distribution of mineral revenue to the Tribe and the UDC as trust beneficiaries. *Id.* at 3. Appellant also demanded a “complete administrative accounting of the revenues that have been generated from these shares.” *Id.* at 4.

The Regional Director responded by letter dated August 1, 2014, and explained that when the Secretary restored the Strawberry Property to tribal ownership in 1960, “the minerals became subject to joint management under Section 10 of the [UPA].” Letter

from Regional Director to Appellant, Aug. 1, 2014 (AR 44).<sup>8</sup> Accordingly, the Regional Director concluded that the patent issued to Bumgarner for the surface rights to the Strawberry Property did not change “the ownership and management of the mineral estate,” because pursuant to the UPA, the minerals had been reserved to the United States in trust for the benefit of the Tribe and subject to joint management of the Tribe and the mixed-blood Indians. *Id.*

Counsel for Appellant, Dennis G. Chappabitty (Counsel), challenged the Regional Director’s response. *See* Letter from Counsel to Superintendent, Aug. 16, 2014 (AR 45-48); Letter from Counsel to Regional Director, Sept. 13, 2014 (AR 55-57). The Regional Director answered by quoting his previous letter to Appellant in full. Letter from Regional Director to Counsel, Sept. 30, 2014 (AR 77-78).

Counsel objected again, this time arguing that the Regional Director’s conclusion that the minerals were subject to joint management by the UDC was in error. Letter from Counsel to Regional Director, Oct. 9, 2014 (AR 86-89). Citing various meeting minutes in connection with the implementation of the UPA, Counsel appeared to argue that the UDC, as successor to the Affiliated Ute Citizens, the original authorized representative of the mixed-blood group, was unauthorized to participate in the management of the mineral estate. *Id.* at 1-3. Counsel also renewed the demand for a “Mineral Deed” to be issued to Bumgarner. *Id.* at 4.

After Appellant and Counsel separately contacted the Assistant Secretary – Indian Affairs regarding Appellant’s claim to the mineral rights, the Regional Director issued the Decision now on appeal. Letter from Regional Director to Appellant, June 22, 2015 (Decision) (AR 101-03). The Regional Director explained that the patent issued to Bumgarner was subject to a reservation clause, which operated “to create a right or interest (or refer to a right or interest already created) to be retained by the grantor in the estate granted.” *Id.* at 2. The effect of the reservation clause was to sever the mineral estate, ownership of which was retained by the United States in trust for the benefit of the Tribe and mixed-blood Indians, from the surface estate, which was conveyed in fee simple to Bumgarner. *Id.* The Regional Director maintained that this interpretation of the reservation clause is consistent with § 10 of the UPA, which reserved all oil, gas and other minerals to be managed jointly by the Tribe and the authorized representative of the mixed-

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<sup>8</sup> We note that the Regional Director’s letter contained a typographical error which mistakenly identified section 26 of the property as section 36. *Id.* at 1. This error was repeated in subsequent correspondence from BIA, but was not raised by Appellant as a source of error in the Regional Director’s decision. The typographical error is not of substantive importance to the Regional Director’s, or our, legal analysis.

blood Indians. *Id.* Thus when tribal land was “conveyed to individual mixed-blood members in fee” pursuant to the UPA, as it was under Bumgarner’s patent, the mineral estate was “retained by the United States in trust status.” *Id.* “If the United States intended to convey the mineral estate in fee,” the Regional Director explained, “the reservation clause would not have been included in the patent.” *Id.* The Regional Director concluded that Appellant therefore had no mineral interests in the Strawberry Property, in either her individual capacity or as Administratrix of Bumgarner’s estate, “except to the extent of her ownership of shares in the UDC.” *Id.*

Appellant appealed to the Board. Appellant filed an opening brief, the Regional Director answered, and Appellant filed a reply.

### Standard of Review

The Board reviews legal issues, and the sufficiency of the evidence to support a decision, *de novo*. *Picayune Rancheria of the Chukchansi Indians v. Pacific Regional Director*, 62 IBIA 103, 114 (2016); *Los Alamos Self Storage v. Acting Southwest Regional Director*, 60 IBIA 1, 9 (2015). Appellant bears the burden of showing error in the Regional Director’s decision. *Big Sandy Rancheria Band of Western Mono Indians v. Pacific Regional Director*, 61 IBIA 311, 314 (2015); *Los Alamos Self Storage*, 60 IBIA at 9.

### Discussion

Appellant makes numerous complaints to the Board regarding BIA’s implementation of the UPA, the creation of the UDC, and its role in the management of the mineral estate of the Strawberry Property. *See e.g.*, Opening Brief (Br.), Sept. 17, 2015, at 12, 21-23. We decline to address these objections, however, because the dispositive legal issue, with respect to our review of the Regional Director’s decision, is whether the patent issued to Bumgarner conveyed an exclusive ownership interest in the mineral estate.<sup>9</sup> Despite Appellant’s arguments to the contrary, we find that the plain language of the patent supports the Regional Director’s conclusion that Bumgarner never received an interest in

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<sup>9</sup> We note that to the extent that Appellant challenges the UDC’s authority to jointly manage the mineral estate, this issue was settled in the affirmative by the Supreme Court in *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128, 144 (1972) (“Clearly, it is UDC and not AUC that is entitled to manage the oil, gas, and mineral rights with the committee of the full-bloods.”), and the Board has no authority to depart from this ruling. We also note that many of Appellant’s objections regarding the UDC, such as the eligibility of non-Indian stockholders to receive mineral revenues, *see* Appellant’s Reply Br., Dec. 16, 2015, at 5, are outside the scope of the instant appeal.

the mineral estate. The reservation clause makes clear that ownership of the mineral estate was retained by the United States, the grantor of the patent, and the statutory provisions cited by the Regional Director correctly identify the beneficiaries of this trust as the Tribe and mixed-blood group. Therefore the Regional Director's decision to deny Appellant's request for a deed to the mineral estate of the Strawberry Property is affirmed.

I. The Plain Language of the Patent Does Not Support Appellant's Claim to an Ownership Interest in the Mineral Estate

The patent for the Strawberry Property was issued "subject to the reservation of all oil, gas and other minerals to the United States in trust for the beneficial owners thereof, their heirs and assigns." Bumgarner Patent (AR 35). Appellant argues that the patent could not be "clearer" in conveying the mineral estate to Bumgarner and her heirs, as the beneficial owners of the mineral estate, because the patent "is 'what it is, says what it says and means what it says' all in plain and simple language." Opening Br. at 25. Appellant finds her interpretation more plausible than the Regional Director's because the reservation clause does not explicitly state that the minerals are subject to joint management under the UPA, or that the revenue from the mineral estate should be shared by the Tribe and the UDC. *Id.*

We disagree with Appellant that the patent issued to Bumgarner for 3,200 acres of land conveyed any interest in the mineral estate associated with the land. The effect of the reservation clause was to sever the mineral estate from the surface estate, retaining ownership of the former exclusively in the grantor. *See* 53 Am. Jur. 2d Mines and Minerals § 181. If Bumgarner were granted the entire fee interest, no reservation would have been included or necessary, and it would have made no sense to refer to the "beneficiaries" for the mineral reservation, as distinguished from those identified in the grant of the surface estate.<sup>10</sup> We disagree with Appellant that the term "beneficial owners" refers to Bumgarner. Relying on the plain language of the term, as Appellant would have us do, we interpret its plural form to reserve the minerals to more than one owner, before descending to the owners' respective heirs and assigns. This is consistent with the Regional Director's

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<sup>10</sup> The patent provides that "the UNITED STATES OF AMERICA . . . DOES GIVE AND GRANT, unto the said Elizabeth C. Bumgarner, and to her heirs, the Land above described." Bumgarner Patent. This provision is followed by the reservation clause cited above, which makes the conveyance "subject to the reservation of all oil, gas and other minerals to the United States in trust for the beneficial owners thereof, their heirs and assigns." *Id.* The term "thereof" refers back to the "oil, gas and other minerals" that are subject to this reservation, as opposed to the ownership of the surface estate conveyed by the grant.

interpretation of the reservation in favor of the Tribe and the mixed-blood group of Indians, and is inconsistent with Appellant's contention that Bumgarner was granted exclusive ownership of the mineral estate.<sup>11</sup>

Curiously, Appellant appears to concede this point in her reply brief, where she states:

The term 'beneficial owners' is clarified by other deeds . . . [and] should have read: "There is reserved to the [Tribe] and the Affiliated Ute Citizens of the State of Utah, All Minerals and Mineral Rights, including oil and gas, together with the right to lease, extract and retain the same, pursuant to the said Act of August 27, 1954."

Reply Br. at 4; *see also* Opening Br. at 14 (arguing that all mixed-blood patents subject to the UPA should have been similarly worded). At the very least, Appellant's example shows that similar deeds issued pursuant to the UPA expressly reserved the minerals for the benefit of the Tribe and mixed-blood Indians. Thus we cannot accept Appellant's argument that the plain language of the patent for the Strawberry Property unambiguously conveyed exclusive ownership of the minerals to Bumgarner. As such, Appellant has not shown error in the Regional Director's decision to deny her request for a deed to the mineral estate.

## II. The Regional Director's Interpretation of the Patent is Consistent with the UPA and the Solicitor's Opinion Regarding Patented Lands

The Bumgarner patent was issued "according to the provisions of the [UPA]," and § 10 of the UPA reserves all oil, gas and other minerals to the United States in trust to be managed jointly by, and for the benefit of, the Tribe and the authorized representatives of the mixed-blood group. UPA § 10, 68 Stat. at 873. It follows that the reservation clause was intended to comply with the UPA, under whose provisions the patent was issued, by likewise reserving the mineral estate of the Strawberry Property in favor of the Tribe and mixed-blood Indians. Bumgarner Patent (directing that a fee simple patent should be issued to Bumgarner "according to the provisions of the [UPA]"). Adopting Appellant's interpretation of the reservation clause, and thereby conveying exclusive ownership of the

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<sup>11</sup> We also note that were we to accept Appellant's understanding of the effect of the reservation clause, which we do not, any mineral interests conveyed with the land to Bumgarner by the patent, were by that same argument returned to the United States when the Strawberry Property was re-conveyed to the United States in trust for the Tribe, "[s]ubject to reservation in the United States of all minerals and mineral rights." Order on Mandate at 2.

mineral rights to Bumgarner, would go against the explicit requirements of the statute, and render the patent internally inconsistent.

Further, the Secretary's restoration of opened lands to tribal ownership in 1945 prompted the Solicitor to explain that Congress never divested the Tribe of beneficial title to the minerals underlying its reservation lands, regardless of whether they had been disposed-of by patent or returned to tribal ownership. *See* Solicitor's Opinion, 59 I.D. at 394-96. The Regional Director's interpretation of the patent's reservation clause in favor of the Tribe and the mixed-blood Indians is consistent with the Solicitor's opinion, and Appellant has shown no error in the Regional Director's reliance on such context to inform his interpretation.

III. The Decision Does Not Deny Appellant's Share of the Mineral Income as a Shareholder of the UDC

For the foregoing reasons, Appellant has not shown that she has an exclusive ownership interest in the mineral estate of the Strawberry Property and has therefore failed to show error in the Regional Director's decision to deny her request for a "mineral deed." But we note that the Decision does not preclude Appellant from enjoying her share of the revenue "to the extent of her ownership of shares in the UDC for the minerals held in trust and in common with the Ute Tribe." Decision at 2.

**Conclusion**

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board affirms the June 22, 2015, decision of the Regional Director.

I concur:

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// original signed  
Robert E. Hall  
Administrative Judge

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//original signed  
Steven K. Linscheid  
Chief Administrative Judge