

CLARENCE H. HUNT
MAMIE M. HUNT

IBLA 70-638
70-639

Decided May 4, 1972

Appeals from decisions of Riverside, California, Bureau of Land Management, rejecting homestead application and oil and gas lease offer.

Affirmed.

Homesteads: Lands Subject To

Land which has been patented as a Mexican land grant confirmed in accordance with the Act of March 3, 1851, is not subject to application under any of the public land laws, and any such application must be rejected.

Patents of Public Lands: Generally--Surveys of Public Lands:
Generally--Boundaries

In the interpretation of a patent for a Mexican private land grant in which the bank of a river is designated as one of the boundaries, the rule will be applied that where a call is from one point in a continuous object, natural or artificial, to another point in the same object, the line between and connecting the two points follows the sinuosities of such object, rather than a straight line connecting these points. The call for courses and distances in a Government survey made subsequent to a Mexican private land grant which is at variance with sinuosities of a river bank must yield in case of doubt to the superior call to the natural monuments referred to as constituting the boundary of the claim.

APPEARANCES: Clarence H. Hunt, Mamie M. Hunt, pro se.

OPINION BY MR. HENRIQUES

Clarence H. Hunt and Mamie M. Hunt have appealed from separate decisions of the District and Land Office, Bureau of Land Management, Riverside, California, dated May 14 and 15, 1970, rejecting their oil and gas lease offer, R-2762, and their homestead application, R-2761, for an unsurveyed tract of approximately

13 acres in protracted secs. 19 and 20, T. 6 S., R. 10 W., S.B.M., California, because the land is included within the patented Rancho Santiago de Santa Ana land grant. 1/

Appellants contend essentially that the Government survey of the Santiago de Santa Ana grant specifically excludes the tract they seek and that controversy and doubt exist in local title insurance companies as to whether or not the subject land is in fact within or without the title boundary lines of Rancho Santiago de Santa Ana. They admit the subject tract has never been surveyed within the rectangular system of public land surveys and request that such survey be now made.

The Chief, Division of Engineering, Bureau of Land Management, made these comments with respect to these matters:

The two parcels of land described in the oil and gas lease offer [and the homestead application] are not unsurveyed public lands of the United States. Rather, they are found to lie within the boundaries of the confirmed and patented claim "Rancho Santiago de Santa Ana." Our reasoning is supported by the following facts:

The plat of T. 6 S., R. 10 W., S.B.M., approved June 30, 1890, represents the survey of all lands outside of the private claims. It shows the public lands returned as surveyed in Sections 19, 20, 27, 28, 29, and 34 to be bounded on the north by the right or south bank of the Santa Ana River. The several section lines shown within Rancho San Joaquin and Rancho Santiago de Santa Ana are regarded as blank lines run on the ground for the purpose of projecting the rectangular survey over the public lands and giving sectional identity to the several islands within Newport Bay or Inlet.

The history and the matter of the survey of the Rancho de Santa Ana is well documented in the Secretary's decision of April 14, 1883 (1 L.D. 213). With the exception of the following portion of the original boundary description, which was compared to the original papers, filed in PLC Docket 578, California, it will not be repeated here.

1/ The application to make homestead entry must be rejected in any event as such applications may be allowed only for surveyed public lands. 43 U.S.C. § 161 (1970).

"Commencing at the mouth of the river Santa Ana, where it empties into the Sea, thence running up the bends and old bed (caja vieja) of the eastern bank of said river to a point * * *."

As can be seen by this description, the left or eastern bank of the Santa Ana River was the legal outboundary of the claim, rather than the surveyed lines representing that bank by the Deputy Surveyor. It is a well settled principle that a call for a natural object, such as a river, a creek, the mouth of two streams, a dividing ridge between designated localities, etc., shall control both course and distance (48 L.D. 87, and cases cited therein).

Therefore, in view of the above finding, it is our opinion that title to the subject lands was never in the United States, but passed to the claimants of the Rancho Santiago de Santa Ana through actions of the Mexican Government.

In Rancho Santiago de Santa Ana, 1 L.D. 213 (1883), the Department held:

Where the boundary of a claim is a river which has [suddenly] changed its course, cutting off a part of the claim, the change does not deprive the claimant of the excised land; the boundary remains where the river ran at the date of the grant. (Syllabus)

Land in Mexican land grants which have been confirmed by patent pursuant to the Act of March 3, 1851 (9 Stat. 631), never became a part of the public domain, and any application under the public land laws therefor must be rejected. See Ben McLendon, 49 L.D. 548, rehearing denied, 49 L.D. 561 (1923); John Adams, 51 L.D. 591 (1926); Ada Monika Williams, 52 L.D. 491 (1928); Fred E. Doty, 53 I.D. 361 (1931); Richard P. Woitke, A-27875 (April 2, 1959).

The exhibits submitted by the appellants do not give persuasive support to appellants' contentions.

The Secretary of the Interior is under a duty to determine whether lands applied for are vacant public lands and subject to disposal, or whether they have been previously reserved, granted, or sold. Pursuant to such determination, he may order a survey of lands believed to be public lands. But the record in this case does not indicate an adequate basis upon which the Secretary could properly determine that the lands applied for are public lands.

In light of the determination that the subject lands are not public lands of the United States, the request by the appellants for a survey may not be entertained, as the authority of this Department to make such surveys is limited to public lands. 43 U.S.C. § 751 (1970). See State of Louisiana, 60 I.D. 129 (1948).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decisions of the Bureau of Land Management are affirmed.

Douglas E. Henriques, Member

We concur:

Frederick Fishman, Member

Anne Poindexter Lewis, Member

