

BATTLE MOUNTAIN WILD CAT, INC.

IBLA 71-258

Decided November 22, 1972

Appeal from decision (Nevada 5409) of Nevada Land Office, Bureau of Land Management, rejecting an oil and gas lease offer.

Decision vacated, case remanded.

School Lands: Generally

A grant of school lands to the State of Nevada is void and of no effect where the land had not been identified by an official survey prior to a substitute grant of other lands.

Oil and Gas Leases: Lands Subject to

A rejection of an oil and gas lease offer for the reason that it embraced lands "patented without mineral reservation" is properly vacated and the case remanded where title to the tract has not passed out of federal ownership.

APPEARANCES: James A. Schasre, Esq., of Spokane, Washington, for appellant.

OPINION BY MR. GOSS

Battle Mountain Wild Cat, Inc., has appealed from a decision of the Nevada Land Office, Bureau of Land Management, dated March 10, 1971, which rejected its oil and gas lease offer pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1970), for the reason that the land was patented without a mineral reservation to the United States. The land herein concerned is the SE 1/4 sec. 36, T. 32 N., R. 44 E., M.D.M. Lander County, Nevada.

Appellant asserts that though the tract is vested in the Southern Pacific Transportation Company according to State record, the land is available for leasing since title to the land is actually in the United States rather than in the Company.

The land herein concerned has not been patented by the United States. It was however, within one of the Sections 36 which were granted to the State of Nevada--subject to survey--upon admittance

to the Union under the Enabling Act of March 21, 1864 (13 Stat. 30), for support of schools. The State of Nevada deeded the land concerned to Charles Crocker on July 25, 1870. An official survey of the particular section 36 was not completed and approved until January 30, 1917.

By the Act of June 16, 1880 (21 Stat. 287), Congress substituted some 2,000,000 acres for the school sections originally granted. Section 1 of that Act provided in part:

. . . [T]he title of the State and its grantees to such sixteenth and thirty-sixth sections as may have been sold or disposed of by said State prior to the passage of this act shall not be changed or vitiated in consequence of or by virtue of this Act. .

. .

Appellant questions the validity of the State's conveyance to Crocker, inasmuch as title to school land sections did not vest in the State prior to the substitution. Appellant requests a review of the ownership question and issuance of an oil and gas lease.

Appellant's position is well founded. Title to school sections does not vest until the lands have been identified by an official survey. United States v. Morrison, 240 U.S. 192 (1916). Since section 36 was not surveyed and identified by an official plat until 1917, title thereto was not vested in the State at the time of the 1870 State patent to Crocker. Heydenfelt v. Daney Gold, et al., 93 U.S. 634 (1876). Because the Act of June 16, 1880, supra, substituted other lands in lieu of the section 36 grant herein under consideration, the 1864 grant was not vitalized by the 1917 survey. See United States v. Wyoming, 331 U.S. 440 (1947). See also the Bureau of Land Management decision in Lander County, Nevada, Patent No. 27-68-0070 (October 14, 1970), which decision is now final. In Lander County the United States recognized its title to the same Section 36 as herein concerned, and issued a patent to the County.

The United States having title to Section 36, the Bureau has discretion to accept appellant's offer to lease, provided that the other requirements of law and regulation are satisfied.

The Southern Pacific Transportation Company, successor to Crocker, has questioned its own title. In circumstances where title to oil and gas deposits is not free from doubt, this Board has recently held that it is appropriate for the lease to issue but for the Bureau of Land Management to first obtain a written stipulation from the lessee. Such stipulation should state that the lease is accepted with prior knowledge of the conflicting claim, and that the United States makes no warranty of title, express or

implied, as to the oil and gas deposits; further, that the United States assumes no obligation to defend the validity of such oil and gas lease. See Georgette B. Lee, 5 IBLA 295, 297 (1972).

A copy of this decision will be furnished to the Southern Pacific Transportation Company. If the Company should determine to object to issuance of a lease by the Government, the Company may initiate an appropriate proceeding, in which proceeding consideration will be given to any points to be raised by the Company.

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 vacated and the case remanded to the Bureau of Land Management for further action consistent with this decision.

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Joseph W. Goss, Member

We Concur:

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Newton Frishberg, Chairman

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Joan B. Thompson, Member

