

DAVID A. PROVINSE

IBLA 74-39

Decided May 28, 1974

Appeal from a decision of the Montana State Office rejecting in part noncompetitive oil and gas lease offer M-24740.

Vacated and remanded.

Navigable Waters--Patents of Public Lands; Effect--Public Lands:  
Riparian Rights

Grants by the United States of its public lands bounded on streams or other waters, navigable or nonnavigable, made without reservation or restriction, are to be construed as to their effect according to the law of the state in which the land lies.

Lieu Selections--School Lands: Generally--Public Lands: Riparian  
Rights

The acceptance by a State of other lands in lieu of lands lying within the meander line of a nonnavigable lake adjacent to the granted upland school section, was a relinquishment of any interest in the adjacent land underlying the lake as an incident to the grant of the school section and precludes assertion of a State claim to such lands.

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

A meander line is not a line of boundary, although it may be given that effect by a withdrawal, exception, reservation or relinquishment of lands which border thereon.

APPEARANCES: David A. Provinse, pro se.

## OPINION BY ADMINISTRATIVE JUDGE STUEBING

David A. Provinse has appealed from the June 21, 1973, decision of the Montana State Office, Bureau of Land Management (BLM), which rejected, in part, his oil and gas lease offer M-24740. The Montana State Office did not believe that the United States had title to those lands for which the lease offer was partially rejected. Those lands underlie a nonnavigable lake, known as Horseshoe Lake, and are located in Section 36, T. 36 N., R. 28 E., P.M., Phillips County, Montana.

Section 36 was granted to the State of Montana upon its admission to the Union for support of its public schools. Act of February 22, 1889, sec. 10, 25 Stat. 676, 679. When the section was surveyed in 1911, Horseshoe Lake was meandered, and the surveyor's return indicated that the section was fractional. The deficiency was computed as 219.32 acres, or stated alternatively, the lake covered that many acres of land within the section. Pursuant to the Act of February 28, 1891, as amended, 43 U.S.C. §§ 851, 852 (1970), the State of Montana selected and was granted 219.32 acres of other lands in lieu of the deficiency in Section 36. 1/

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1/ Survey approval for all of T. 36 N., R. 28 E., P.M., was given April 3, 1912. There were 420.68 surveyed acres in Sec. 36. Confirming patent, #1117250, for the surveyed acres was issued September 7, 1943. Assuming Sec. 36 embraces 640 acres, the State of Montana employed Lists 10, 21, 64, and 47 as deficiency base for lieu selections which totaled 219.32 acres.

The Montana State Office was of the opinion that title to the lakebed was in the State of Montana, and not in the United States. This opinion was based on three different items: (1) a decision of the Director of the Bureau of Land Management styled Rex H. Baker, M 022695(ND) (July 21, 1958); (2) an inquiry dated June 6, 1973, from the Chief, Division of Technical Services, to the Field Solicitor; and (3) the Field Solicitor's opinion dated June 8, 1973.

The Baker decision held that where a school section was traversed by a nonnavigable body of water, and that water body was depicted by meander lines along the banks, the lands within the meander lines are unsurveyed, and title to that unsurveyed land did not pass to the State upon approval of the plat of survey by virtue of the school grant. Baker further held that acceptance by the State of other lands in lieu of lands within the meander lines of a nonnavigable stream adjacent to uplands granted it as school lands is a relinquishment by the State of any claim of title to the lands within the meander lines.

The Chief, Division of Technical Services, in his June 6, 1973, request to the Field Solicitor for his opinion as to the ownership of the bed of Horseshoe Lake, disagreed with the Baker decision. It was the Chief's opinion that the State did not relinquish any claim to title to the unsurveyed lakebed. He reasoned that it never received title, nor did it have title, and thus had nothing

to relinquish. The Chief read the Baker decision as a departure from the common law regarding riparian rights where an in-place school section is involved. According to the common law, the bed of the lake belongs to the owners of the adjoining upland.

In the Field Solicitor's response, he stated that assuming that Horseshoe Lake is a nonnavigable body of water, the standard rule of construction should apply in determining the ownership of the lakebed. This rule is statutory in Montana and provides as follows:

67-712. (6771) Boundaries by water. Except where the grant under which the land is held indicates a different intent, the owner of the land, when it borders upon a navigable lake or stream, takes to the edge of the lake or stream at low-water mark; when it borders upon any other water, the owner takes to the middle of the lake or stream. Revised Codes of Montana, 1947.

He added that this rule is particularly applicable in light of 43 U.S.C.

§ 931 (1970):

Navigable rivers as public highways. All navigable rivers, within the territory occupied by the public lands, shall remain and be deemed public highways; and, in all cases where the opposite banks of any streams not navigable belong to different persons, the stream and the bed thereof shall become common to both. (R.S. § 2476.)

He therefore concluded that ownership of the minerals in the bed of Horseshoe Lake accrues to the corresponding ownership of its shoreline. He also expressed the belief that Baker misconstrued the holding in United States v. Oregon, 295 U.S. 1 (1935).

Concerning that case, the Field Solicitor stated:

[T]he State of Oregon, by statute, attempted to lay claim to title [to land] underlying non-navigable bodies of water, which statute conflicted with a prior executive order declaring the area set apart as a bird reserve to be administered by a United States agency. The prior executive order controlled all later grants by the United States and, coupled with the State's relinquishment and selection of lieu lands, called for the holding cited therein.

Accordingly, the Montana State Office concluded that the United States did not own the bed of Horseshoe Lake and rejected appellant's offer to lease as to those lands. The appellant, however, argues that the Rex Baker decision is correct, should be applied in this case, and consequently, a lease should be issued for the lakebed.

We agree that the United States has title to the bed of Horseshoe Lake. However, there is an inference which has been drawn from the Rex Baker case which is, at best, misleading. That inference was drawn from a rather cryptic paragraph which states:

The section 16 grant served to vest in the State all the surveyed lands in the section immediately upon survey. Title to the lands within the meander lines, not surveyed lands, did not pass to the State by virtue of the school grant, and if the grant was deficient in the 64.30 acres within the meander lines, the State was entitled to select indemnity lands. (Emphasis added.)

Clearly, title to school lands granted to the states by various acts does not pass to the state until such time as those lands have been surveyed. United States v. Morrison, 240 U.S. 192, 204 (1916); Battle Mountain Wild Cat, Inc., 8 IBLA 157, 158 (1972). But lands within meander lines are excluded from official surveys and, hence, are considered to be unsurveyed. Lee Wilson & Co. v. United States, 245 U.S. 24, 29 (1917); Bernard J. Gaffney, A-30327 (October 28, 1965). The Act of February 26, 1859, as amended, 43 U.S.C. §§ 851, 852 (1970), provides that states may make selections of other lands in lieu of lands previously granted which, for some reason, have been found deficient. The purpose of those Acts was to provide for the support of public schools. Therefore, it is clear that lands underlying water were considered deficiencies, since it was then considered that no money could be realized from their sale. See, e.g. State of Idaho, 37 L.D. 430, 433 (1909), where the Department stated that lands covered by water were not "land" within the meaning of the school land grants.

However, the difficulty with the proposition quoted from the Rex Baker case is the inference that has been drawn, viz., that title to lands lying under meandered bodies of water on school land grant

sections is precluded from passing by virtue of the various school land grant acts under some other doctrine of law. That is not the case.

The United States transferred title to the beds of navigable bodies of water within a particular state to that state upon its admission to the Union, but retained title to the beds of nonnavigable bodies of water. United States v. Oregon, *supra*; United States v. Utah, 283 U.S. 64 (1931); Oklahoma v. Texas, 258 U.S. 574 (1922); Scott v. Lattig, 227 U.S. 229 (1913).

The generally accepted doctrine is that the bed of a nonnavigable lake is usually deemed to be the property of the adjoining landowners. 12 Am. Jur. 2d § 15 Boundaries (1964). When disposing of the uplands, the United States is free to retain any part of the riverbed, and whether or not it has done so is a question of intent. Oklahoma v. Texas, *supra*. There is, however, a strong presumption that the owner intends to convey all the land he owns under the water. 12 Am. Jur. 2d, *supra*. This Department has held that an unrestricted patent issued by the Government conveying public lands abutting a nonnavigable lake in the State of Montana carries with it absolute riparian title to the lakebed. William Erickson, 50 L.D. 281 (1924); See Grayce R. Hiler, A-27370 (December 19, 1956); see also Clayton Phebus, 48 L.D. 128 (1921), to the extent that it was not

overruled by Erickson, supra. A conveyance by the United States should be construed and given effect according to the law of the State in which the land lies, unless the United States expresses an intention to the contrary. United States v. Oregon, supra; Oklahoma v. Texas, supra; Brewer-Elliott Oil & Gas Company v. United States, 260 U.S. 77 (1922).

Under the common law and decisions of the United States Supreme Court, a grant of land bounded on a nonnavigable river carries the exclusive right and title of the grantee to the center of the stream, unless the terms of the grant clearly denote the intention to stop at the edge or margin of the river. United States v. Elliot, 131 F.2d 720, 723 (10th Cir. 1942). Such an intention is not made manifest merely by the fact that a fractional section is surveyed only to the meander line. In Grayce R. Hilier, supra, this Department held that title to the beds of nonnavigable lakes passed to the State of New Mexico along with the abutting lots, but that this fact can nowise affect the computation of future indemnity selections by the State.

The following is quoted from United States v. Champlin Refining Co., 156 F.2d 769 (10th Cir. 1946); aff'd, sub nom. Oklahoma v. United States, 331 U.S. 788, rehearing denied 331 U.S. 869 (1947):

Grants by the United States of its public lands bounded on streams or other waters, navigable or nonnavigable, made without reservation or restriction, are

to be construed as to their effect according to the law of the state in which the land lies. As regards such conveyances, the United States assumed the position of a private owner, subject to the general law of the state. \* \* \* At 773.

Under the rules of common law, unless a contrary intention appears or is clearly inferable from the terms of the grant, the grantee of land, bounded by a nonnavigable stream [lake] or river, acquires title to land to the center or thread of the water, on the theory that the grantor will not be presumed to have reserved a strip of land covered by water which will be of no practical value to him. At 774.

In Hardin v. Jordan, 140 U.S. 371, 384 (1891), the Court said, "\* \* \* In our judgment, the grants of the Government for lands bounded on streams and other waters, without any reservation or restriction of terms, are to be construed as to their effect according to the law of the State in which the lands lie."

In Whitaker v. McBride, 197 U.S. 510, 512 (1905), it was held that a patentee from the United States government has all the rights of a riparian owner in the nonnavigable channel lying opposite his banks. The Court also held in that case that:

\* \* \* A meander line is not a line of boundary, but one designed to point out the sinuosity of the bank or shore, and a means of ascertaining the quantity of land in the fraction which is to be paid for by the purchaser. Railroad Company v. Schurmeir, 7 Wall 272; Hardin v. Jordan, 140 U.S. 371; Horn v. Smith, 159 U.S. 40.

The common law is embodied in these principles and we see no reason for a departure from them.

In United States v. Oregon, supra, the United States brought suit against the State of Oregon to quiet title to lands underlying nonnavigable lakes within the meander line boundary. Regarding subdivision B of the Narrows (one of the lakes in question) it was determined that prior to the commencement of the suit, the United States had disposed of all its interests in the uplands bordering on the meander line on both sides to private patentees and to the state as indemnity lands under the school land grant to Oregon. The Court, agreeing with the Master's recommendation, held that the United States retained no interests in the lands within the meander line boundary, since 43 U.S.C. § 931 (1970), provides that in all cases where the opposite banks of any stream not navigable belong to different persons, the stream and the bed thereof shall become common to both. The State was also held to be owner in fee simple of certain lands within the meander line of Mud Lake, incident to its ownership of patented uplands contiguous with the meander line. These holdings are in accord with traditional concept of the common law that riparian title to the lakebed passes with title to the upland.

The ownership of lands within the meander lines fronting the Sand Reef and Harney Lake were also in question. Oregon claimed

the land as incident to the ownership of the adjacent upland school section. The claim, however, was rejected because the Executive Order of August 18, 1908, which set aside the land in question for a bird reserve, predated the approval of the survey of the upland. The Executive Order imposed a reservation, thereby preventing the State from acquiring an interest in the lands within the meander line upon this frontage as incident to its ownership of the upland. Again, we find no conflict with the common law right of riparian owners. The reason why the land within the meander line did not pass to the State was because it had been effectively withdrawn. Thus the case in issue can be distinguished from the Oregon case as there has been no withdrawal of lakebed land in the present case.

Another portion of the frontage on Harney Lake discussed in the Oregon case consisted of school lands which passed to Oregon under a survey approved before the Executive Order. The State had claimed and received lieu lands elsewhere for a deficiency in granted school lands which deficiency lay within the meander line. The Court held at 10-11 as follows:

\* \* \* [T]he acceptance by the State of lands elsewhere, in lieu of lands lying within the meander line adjacent to the granted uplands, was such a practical construction of the boundary, and necessarily involved such a relinquishment of any interest in the adjacent lands as an incident to the grant of uplands, as to preclude the assertion of that claim here.

Therefore, the United States retained the entire interest in the area within the meander line of Lake Harney except such interest as was acquired by an individual patentee of the upland who was not party to the suit.

That holding is precisely applicable to the case here under consideration. On the basis of the rule in the Oregon case, we hold that Montana's selection and acceptance of other lands in lieu of the lands within the meander line constituted a relinquishment of any interest in the lands underlying Horseshoe Lake as included in the grant of the upland portion of the school section, or riparian thereto, and precludes any assertion of the State claim to such lands.

We find that a meander line is not a line of boundary, although it may be given that effect by the withdrawal, reservation, exception or relinquishment of lands which border thereon. To the extent that Rex H. Baker, supra, is inconsistent with this opinion it is in error, and we overrule it.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the

decision below is vacated and the case is remanded to the State Office for further action consistent with this opinion.

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Edward W. Stuebing  
Administrative Judge

We concur:

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Douglas E. Henriques  
Administrative Judge

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Joseph W. Goss  
Administrative Judge

