

O. D. PRESLEY

IBLA 75-434

Decided July 28, 1975

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, cancelling part of oil and gas lease W 48909.

Affirmed.

1. Oil and Gas Leases: Cancellation -- Oil and Gas Leases: Lands
Subject to

Where a federal oil and gas lease has issued covering land which has been patented with no mineral reservation to the United States in the patent, the oil and gas lease is properly cancelled as to such land.

APPEARANCES: O. D. Presley, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

O. D. Presley appeals from a decision of the Wyoming State Office, Bureau of Land Management, dated March 28, 1975, cancelling, in part, oil and gas lease W 48909.

Lease W 48909 issued on March 13, 1975, effective April 1, 1975, embracing lot 7 sec. 5, and lots 6, 7 sec. 9, T. 53 N., R. 101 W., 6th P.M., Park County, Wyoming, covering 6.24 acres. On March 28, 1975, the Wyoming State Office, BLM, cancelled the lease to the extent that it covered lots 6 and 7 in sec. 9, noting that an examination of the records indicated that these lands had been patented without a reservation of oil and gas to the United States. As his basis for appeal, appellant alleges: "It was reported to me that although minerals under the Lots in question were not specifically reserved to the Government, the patent date was recent enough so that mineral rights could not legally have been patented. Therefore, title must still rest with the Government."

[1] The lands in question were patented to one Wilbur G. Williams on February 11, 1953. That patent, No. 1137837, covered 154.39 acres, consisting of S 1/2 NE 1/4 NE 1/4, S 1/2 NW 1/4 NE 1/4, SW 1/4 NE 1/4, N 1/2 NW 1/4 SE 1/4, SE 1/4 NE 1/4 and the N 1/2 N 1/2 NE 1/4 SE 1/4 sec. 8, and lots 6, 7 sec. 9, T. 53 N., R. 101 W., 6th P.M. While the patent reserved all oil and gas in lands in sec. 8, there is no mineral reservation for lots 6 and 7 in sec. 9 in the patent. Furthermore, the land status records also indicate that there was no oil and gas reservation to the United States as to the said lots 6 and 7. Inclusion of these lots in oil and gas lease W 48909 was inadvertent.

Appellant's contention that no patent could have validly issued without a mineral reservation is not correct. The mineral reservation relating to the lands in sec. 8 was inserted pursuant to the Act of July 17, 1914, 30 U.S.C. § 121 (1970), which requires a mineral reservation be placed on lands acquired under the non-mineral land laws where such lands are "withdrawn or classified as phosphate, nitrate, potash, oil, gas, or asphaltic minerals, or which are valuable for those deposits * * *." Id. Thus, it is certainly possible that at the time of patent, lots 6 and 7 were not either withdrawn or classified as valuable for oil and gas deposits.

Even were we to assume that a clerical error had omitted the mineral reservation to lots 6 and 7, the Act of March 3, 1891, 43 U.S.C. § 1166 (1970), requires that any suit to vacate or annul a patent be brought within six years after the date of issuance of the patent. The only exception is in cases of fraud. See Exploration Co., Ltd. v. United States, 247 U.S. 435 (1918). There is absolutely no evidence of any fraud in the patent of the land.

This Board has consistently held that where title to oil and gas deposits is not in the United States any lease issued therefor is a nullity, and must be canceled. See e.g., R. E. Puckett, 14 IBLA 128, 130 (1973); Patricia T. Zebal, 65 I.D. 293 (1958). The State Office decision was clearly correct.

Accordingly, 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 affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Joseph W. Goss
Administrative Judge

