

STATE OF UTAH

IBLA 76-142

Decided September 15, 1975

Appeal from decision of Utah State Office, Bureau of Land Management, rejecting, in part, application for confirmatory patent U 28968.

Reversed and remanded with instructions.

1. Oil and Gas Leases: Generally -- Patents of Public Lands: Generally -- School Lands: Grants of Land -- School Lands: Mineral Lands -- State Grants

Title to a numbered school section which is surveyed on or after July 11, 1956, and on which there is outstanding at the time of such survey a mineral lease entered into by the United States, is granted to the State, and the State shall succeed to the position of the United States as lessor under such lease.

2. Statutory Construction: Generally

In providing for allocation of rents, royalties and bonuses between the United States and a State in proportion to their ownership of a mineral lease partly within and partly without a numbered school section, the Congress intended for producing mineral leases to be included within the exceptions set out in the amendatory Act of July 11, 1956, 30 U.S.C. § 870(d).

APPEARANCES: Paul E. Reiman, Esq., Assistant Attorney General of the State of Utah.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

The State of Utah has appealed from a decision dated July 14, 1975, by which the Utah State Office, Bureau of Land Management, rejected the State's application U 28968 insofar as it requested a confirmatory patent for section 2, T. 36 S., T. 1 E., S.L.M., Utah, for the stated reason that because "oil and gas lease U 019375 issued prior to survey * * * is now in a producing status, these lands are not available for disposal at this time."

[1] Section 6 of the Utah Enabling Act of July 16, 1894, 28 Stat. 107, 109, granted to the State all sections 2, 16, 32 and 36 in every township in support of common schools. Although lands known to be mineral in character did not pass by the original grant, the Act of January 25, 1927, 44 Stat. 1026, provides that unless land has been granted to and/or selected by and approved as indemnity or in lieu of any land so granted by numbered section, title to numbered mineral school sections will vest in the State. The Act of June 21, 1934, 43 U.S.C. § 871a (1970), provides that upon application by a State, the Secretary of the Interior will issue a patent to the numbered school sections in place to which title has vested in the State. The amendatory Acts of April 22, 1954, and of July 11, 1956, 43 U.S.C. § 870 (1970), provide that title to a numbered school section which is surveyed on or after July 11, 1956, and on which there is outstanding at the time of such survey a mineral lease entered into by the United States, is granted to the State, as if it had not been so leased, and the State shall succeed to the position of the United States as lessor under such lease. And where a patent is issued to the State for such numbered section, if a lease is outstanding at the time, the patent will include a statement that the State succeeded to the position of the United States as lessor at the time the title vested in the State.

[2] Plat of survey of section 2, T. 36 S., R. 1 E., S.L.M., was accepted May 4, 1972. Immediately upon approval of the plat of survey title vested in the State of Utah. The State is entitled to a confirmatory patent thereto as provided by the Act of June 21, 1934, supra. The patent will include a statement that the State succeeded to the position of the United States as lessor of any mineral lease covering the land at the time title vested in the State, the date of acceptance of the plat of survey. The presence of a producing oil and gas lease, in part on the numbered school section and in part on other federal lands, does not prevent attachment of the grant to the State. The language employed by the Congress in subsection (d)(5) of the Act of July 11, 1956, supra, provides that in such case rents, royalties and bonuses shall be

divided between the State and the United States in proportion to the acreage in the said lease owned by each. The provision to allocate royalties clearly indicates the will of the Congress that the exceptions defined in subsection (d)(5), supra, were to be applied to producing as well as nonproducing mineral leases, including oil and gas leases. Cf. Mrs. Virginia E. Lewis, 66 I.D. 204 (1959). It was error for the BLM State Office to reject the State's application for patent for the reason that a numbered school section is within a producing oil and gas lease.

When the patent is issued in this case, appropriate apportionment will be made of the rents, royalties and bonuses which have accrued in connection with the numbered school section since the date of acceptance of the plat of survey.

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 reversed and the case is remanded to the Bureau of Land Management for action consistent herewith.

Douglas E. Henriques
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

