

H. B. BALDWIN

IBLA 78-464

Decided October 12, 1978

Appeal from decision of the Arizona State Office, Bureau of Land Management, rejecting petition to revest certain State lands in Federal ownership. AR 033050.

Affirmed.

1. Act of June 14, 1926, 43 U.S.C. § 869 et seq. (West Supp. 1977)—Patents of Public Lands: Generally

Where a patent has been issued under the Recreation and Public Purposes Act of June 14, 1926, as amended, 43 U.S.C. § 869 et seq. (1970), pursuant to a plan of development, and that plan is modified with the consent of the Bureau of Land Management, the failure to comply with the original plan is excused.

2. Patents of Public Lands: Effect

The effect of the issuance of a patent, even if issued by mistake or inadvertence, is to transfer the legal title from the United States and to remove from the jurisdiction of the Department consideration of all disputed questions concerning rights to the land.

3. Evidence: Presumptions—Patents of Public Lands: Generally—Patents of Public Lands: Suits to Cancel

The issuance of a patent creates a presumption that all requisite steps and requirements of law and Departmental regulations have been satisfied.

Even if there were a mistake in the issuance of a patent, such mistake would justify this Department in recommending to the Attorney General that suit be commenced to cancel the patent only where: (1) the Government has an interest in the remedy by reason of its interest in the land; (2) the interest of some party to whom the Government is under obligation has suffered by reason of the patent; (3) the duty of the Government to the people so requires or (4) significant equitable considerations are involved.

Where more than 6 years have passed after the issuance of a patent, suit by the United States to vacate and annul the patent cannot be sustained, 43 U.S.C. § 1166 (1970), absent a positive showing of fraud practiced upon the United States.

APPEARANCES: H. B. Baldwin, pro se.

#### OPINION BY ADMINISTRATIVE JUDGE FISHMAN

H. B. Baldwin has appealed from a letter decision dated May 19, 1978, by the Arizona State Office, Bureau of Land Management (BLM), which rejected his petition to revest certain State lands in Federal ownership.

The lands involved comprise 800 acres described as sec. 21 and NW 1/4 of sec. 22, T. 9 S., R. 9 E., Gila and Salt River meridian, Pinal County, Arizona. These lands were patented to the Arizona State Parks Board on September 13, 1971, pursuant to the Recreation and Public Purposes Act, as amended, 43 U.S.C. § 869 et seq. (1970).

Appellant's interest in these lands stems from mining claims he located thereon in 1969 and 1970. In H. E. Baldwin, 3 IBLA 71 (1971), this Board held that the lands were closed to mineral location at the times of the purported locations and that the claims were therefore null and void ab initio. An appeal taken from the Board's decision was dismissed by the Court of Appeals for the Ninth Circuit on January 16, 1976 (Civ. No. 74-3122, H. B. Baldwin, et al. v. Rogers C. B. Morton).

The petition which was rejected by the decision appealed from recited in pertinent part as follows:

Whereas 1. These subject lands are MINERAL lands as defined by the law.

And Whereas 2. Procedure toward granting these subject lands to the Arizona State Parks Dept. was illegal from proposed classification to patent.

And Whereas 3. Bureau of Land Management officials were, and are now, in possession of positive proof of the mineral character of these subject lands but concealed that evidence from all ruling judges.

And Whereas 4. Petitioner is being deprived of rights, conferred on him by Congress, by the exercise of discretion and by wrongs committed by the land officers.

And Whereas 5. The Arizona State Parks Dept. has not complied with the provisions of Arizona law titled H.B. 217.

And Whereas 6. The Arizona State Parks Dept. has not complied with the provisions of the approved plan of development or the approved plan of management filed with the Bureau of Land Management on July 26, 1970.

Now therefor, in consideration of the foregoing, the undersigned does hereby petition the Secretary of the Interior to revest full title to the above described lands back to the United States.

The decision below conceded that the lands have mineral potential. It stated that the fact that the State of Arizona had not paid the \$12,210.43 to the owners for improvements on the lands, as authorized by Arizona H.B. 217, did not vitiate the patent since it was not issued with such a condition. The decision indicated that the State's development of the property was occurring "as rapidly as funding can be made available."

The desire of appellant to have title to the lands revested in the United States is based upon his implicit recognition that under 43 U.S.C. § 869-1 (West Supp. 1977), minerals are reserved to the United States in patents or leases issued by the Department under the Recreation and Public Purposes Act, as amended, 43 U.S.C. § 869, et seq. (West Supp. 1977). The law further provides that the right is reserved to the United States to mine and remove such minerals "under applicable laws and regulations to be established by the Secretary." No law provides for such disposition of such "hard-rock" deposits in recreation and public purposes leased or patented lands and despite the fact that the Recreation and Public Purposes Act was originally enacted in 1926, no such regulations have been promulgated. Consequently, if title to the lands were revested in the United States,

the lands might become subject to the making of mining locations thereon. However, even if title were revested, if the lands remained classified for disposal under the Recreation and Public Purposes Act, they would not be subject to the operation of the mining laws. 43 U.S.C. § 869 (West Supp. 1977), 43 CFR 2741.2(d), Buch v. Morton, 449 F.2d 600 (9th Cir. 1971). We also recognize that patents granted under the Recreation and Public Purposes Act, as amended, may be terminated by the Department for breach of conditions of the grant. Clark County School District, 18 IBLA 289, 82 I.D. 1 (1975). Cf. Clark County, Nevada, 28 IBLA 210 (1976), rev'd sub nom. County of Clark v. Kleppe, Civ.-LV-77-13 RDF (D. Nevada, January 20, 1978).

Appellant's assertion that the lands are mineral in character, even if established would not bar their disposal under an appropriate law requiring the reservation of all minerals. His shotgun allegation that he has been deprived of his rights cannot be employed as a vehicle to mandate this office to examine the record microscopically in an endeavor to find error below. An appellant has the duty to state with particularity the exact reason for the appeal. See United States v. Richard and Beverly Weigel, 26 IBLA 183 (1976); cf. Duncan Miller, 33 IBLA 83 (1977); Duncan Miller, 28 IBLA 62 (1976).

Whether the State of Arizona has complied with Arizona H.B. 217, as to compensation for surface improvements, cannot vitiate the grant from the United States.

[1] The decision below recognizes explicitly that the plan of development filed on July 26, 1970, with BLM has not been complied with. However, BLM has approved a revision of the plan of development to permit construction of improvements contingent upon funding. Thus no problem of divestiture is presented. See 43 CFR 2741.8, authorizing BLM to approve change of use.

[2] The patent transferring title of the lands to the State of Arizona contains the standard mineral reservation to the United States as required by the Recreation and Public Purposes Act, supra, and 43 CFR 2741.6(d). The effect of issuance of a patent, to the surface, even if issued by mistake or inadvertence, is to transfer legal title to the surface from the United States and to remove from the jurisdiction of the Department consideration of all disputed questions concerning rights to the surface of the land. State of Alaska, 35 IBLA 140 (1978). See also Germania Iron Company v. U.S., 165 U.S. 379, 383 (1897); Femie M. Rogers, 29 IBLA 192 (1977); Nadja Davis Gamble, 23 IBLA 128 (1975); Basille Jackson, 21 IBLA 54 (1975); Ethel Aguilar, 15 IBLA 30 (1974); Bryan N. Johnson, 15 IBLA 19 (1974); Norman M. Rehy, Sr., 13 IBLA 191 (1973); Dorothy H. Marsh, 9 IBLA 113 (1973); Clarence March, 3 IBLA 261 (1971); Everett Elvin Tibbets, 61 I.D. 397 (1964).

[3] The issuance of a patent creates a presumption that all requisite steps and requirements of law and Departmental regulations have been satisfied. Wright-Blodgett Co. v. United States, 236 U.S. 397 (1915); 2 Patton on Land Title, section 292, pages 26-27.

Even if there were a mistake in the issuance of the patent on September 13, 1971, such mistake would justify this Department in recommending to the Attorney General that suit be commenced to cancel the patent only where (1) the Government has an interest in the remedy by reason of its interest in the land; (2) the interest of some party to whom the Government is under obligation has suffered by reason of the patent; (3) the duty of the Government to the people so requires or (4) significant equitable considerations are involved. Everett Elvin Tibbetts, supra. The case at bar satisfies none of these criteria.

Moreover, since more than 6 years have passed after the issuance of the patent, suit by the United States to vacate and annul the patent could not be sustained, 43 U.S.C. § 1166 (1970), absent a positive showing of fraud practiced upon the United States. See Exploration Co. v. United States, 247 U.S. 435 (1918); United States v. Puget Sound Traction Light and Power Co., 214 F. 436 (D. Wash. 1914). Cf. United States v. Eaton Shale Co., 433 F. Supp. 1256 (D. Col. 1977).

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 affirmed.

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Frederick Fishman  
Administrative Judge

I concur.

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Anne Poindexter Lewis  
Administrative Judge

## ADMINISTRATIVE JUDGE BURSKI CONCURRING:

While I find myself in total agreement with the opinion of Judge Fishman in this case, I feel that further explication of certain points might prove beneficial to appellant's understanding of the laws of the United States as they involve public lands and mining thereon.

Appellant, in his brief, continually reiterates his view that mineral lands cannot be selected by or transferred to a State. Appellant is simply wrong. The Federal court cases to which he adverts dealt with the question of the availability of lands within school sections granted to the State, as well as the availability of lands selected by States in lieu of the granted school section where such section had not been available at the time of the grant. At the times at which the decisions he cites were rendered, the law, as interpreted by the Department of the Interior, did exclude "known mineral lands" from the various school grants to the States. See United States v. Sweet, 245 U.S. 563 (1918). However, by the Act of January 25, 1927, 44 Stat. 1026, Congress specifically extended that grant "to embrace numbered school sections mineral in character." Moreover, subsequent Congressional acts permitted the in lieu selection of mineral lands "to the extent that the selection is being made as indemnity for mineral lands." See the Acts of August 27, 1958, 72 Stat. 928, and June 24, 1966, 80 Stat. 220, 43 U.S.C. § 852 (1970).

These specific provisions are not at issue herein, inasmuch as the grant to the Arizona State Parks Board was under the authority of the Recreation and Public Purposes Act, Act of June 14, 1926, as amended 43 U.S.C. § 869 et seq. (1970). But recognition of the fact that Congress has expressly authorized the grant of mineral lands to the State, and permitted State in lieu selection of mineral lands for mineral land deficiencies, clearly indicates that analysis of the specific statutory authority for the grant, rather than a talismanic incantation of a belief that "laws and regulations \* \* \* forbid the withdrawal or transfer of lands known to mineral in character," is determinative of the matter before us.

As originally enacted, the Recreation and Public Purposes Act expressly limited its applicability to "nonmineral" lands. See Act of June 14, 1926, 44 Stat. 741. However, by the Act of June 4, 1954, 68 Stat. 173, Congress removed the term "nonmineral" from the statute and added the proviso which is now found at 43 U.S.C. § 869-1 (1970): "Each patent or lease so issued shall contain a reservation to the United States of all mineral deposits in the lands conveyed or leased and of the right to mine and remove the same, under applicable laws and regulations to be established by the Secretary." That Congress intended the 1954 amendments to make it possible for mineral lands to

be patented under the Recreation and Public Purposes Act seems self-evident. Indeed, the Ninth Circuit Court of Appeals in Buch v. Morton, 449 F.2d 600 (1971), expressly noted that the 1954 amendments were designed to eliminate the prior limitation of "nonmineral lands." 449 F.2d at 605. Appellant's contention that the patent issued is invalid because the lands involved were mineral in character is thus clearly erroneous.

Then, too, appellant labors under a misapprehension as to the status of his mining claims. His claims were located while the land was withdrawn from operation of the mining laws, and they were declared null and void ab initio by the Phoenix land office on March 23, 1971. The land office decision was affirmed by this Board on July 30, 1971, 3 IBLA 71 (1971). Appellant then pursued an appeal through the Federal courts, which appeal was dismissed by the Ninth Circuit Court of Appeals on January 16, 1976 (Civ. No. 74-3122, H. B. Baldwin, et al. v. Rogers C. B. Morton). The Board's finding of invalidity is thus res judicata, and the claimant has no legal right to those claims whatsoever. Restoration of the lands involved to the public domain would not serve to revitalize the claims.

Moreover, even had there been no finding of invalidity by the Department, location of mineral claims at a time in which the lands are not open to mineral location is a nullity, and a subsequent restoration of the lands will not resuscitate such invalid claims. See, e.g., Arthur W. Boone, 32 IBLA 305 (1977); Beverly Trull, 25 IBLA 157 (1976). Thus, return of the lands to United States ownership will avail him nothing.

Finally, I note that appellant states in his statement of reasons for appeal that "this is a formal objection to any person hearing or deciding this matter who is a member of \* \* \* [a certain church] or who owes his or her position, either directly or indirectly, to \* \* \* [a former Secretary, and a present Congressman]." The majority opinion makes no reference to this "objection," apparently believing that this type of statement is best ignored. I feel, however, that the implicit prejudice based on religion manifested in appellant's "objection" is so inimical to our system of Government that it should be expressly rejected.

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James L. Burski  
Administrative Judge

