

LEE E. WILLIAMSON

IBLA 80-353

Decided July 3, 1980

Appeal from a decision of the Montana State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer M 45370 (ND).

Affirmed.

1. Homesteads (Ordinary): Mineral Reservation -- Mineral Lands: Mineral Reservation -- Mineral Lands: Nonmineral Entries -- Patents of Public Lands: Reservations

A patent issued pursuant to the Homestead Act of May 20, 1862, 43 U.S.C. § 161 (1976), reserving to the United States all coal under the Act of June 22, 1910 (36 Stat. 583) and sodium under the Act of July 17, 1914 (38 Stat. 509) in the lands described by such patent, cannot be construed as reserving to the United States other minerals, such as oil and gas, which are not specifically reserved therein.

2. Homesteads (Ordinary): Mineral Reservation -- Mineral Lands: Mineral Reservation -- Mineral Lands: Nonmineral Entries -- Patents of Public Lands: Reservations

Circular 1021, July 21, 1925, instructed the land offices to impress upon a nonmineral application a reservation of those minerals for which the land had been embraced in applications for permit or lease.

3. Patents of Public Lands: Generally

Every patent for public lands carries with it an implied affirmation of every fact

made prerequisite to its issue. No executive officer of the Government is authorized to reconsider the facts on which it was issued.

APPEARANCES: Lee Williamson, Esq., pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Lee E. Williamson appeals from the decision of January 9, 1980, wherein the Montana State Office, Bureau of Land Management (BLM), rejected his noncompetitive oil and gas lease offer M 45370(ND) for the reason that the oil and gas rights in the land are not owned by the United States. Williamson sought to lease the SE 1/4 NW 1/4 sec. 21, T. 162 N., R. 102 W. fifth principal meridian, a parcel containing 40 acres situated in Divide County, North Dakota. The file reveals that title to the subject land passed from the United States by land patent No. 1022090, issued January 1929, to Anton Tuften. The patent recited that it had been issued pursuant to the Homestead Act of May 20, 1862, as amended, 43 U.S.C. § 161 (1976), and reserved to the United States all coal under the Act of June 22, 1910, 30 U.S.C. § 83 (1976), and all sodium under the Act of July 17, 1914, 30 U.S.C. § 121 (1976).

Appellant contends that the Act of July 17, 1914, did not include sodium among the substances enumerated, so that the words in the patent purporting to reserve sodium are ineffectual. He then argues that for the reservation under 30 U.S.C. § 121 to be effective, it must include the particularly named substances, including oil and gas, set out in the statute. As authority for this proposition, appellant cites United States v. Union Oil Co. of California, 549 F.2d 1271 (9th Cir. 1977). 1/

[1] Appellant errs in his contention. Union Oil relates to patents issued pursuant to the Stock Raising Homestead Act of December 29, 1916, amended, 43 U.S.C. § 291 (1976). This act permitted entry on lands suitable for purposes of stock raising or forage farming, but reserved to the United States "all the coal and other minerals in the land so entered" 43 U.S.C. § 299 (1976). In Union Oil, the question concerned the ownership of geothermal resources underlying the patented land. The Court held that geothermal resources were included in the statutory mineral reservation of "coal and other minerals in the lands so entered."

In contrast, the patent for the land here being considered was issued pursuant to the general Homestead Act of May 20, 1862, which was originally applicable only to nonmineral lands of the United

1/ Cert. denied, 98 S.Ct. 712 (1977).

States, 43 U.S.C. § 201 (1976). Subsequent modification permitted entry land valuable for designated minerals, with a reservation to the United States of the specific mineral and the right to enter upon the land, mine and remove the mineral reserved. 2/

The patent No. 1022090 cannot be construed as reserving to the United States any minerals other than those specifically named, coal and sodium. As the Court stated in Union Oil, the patentee under the Stock Raising Homestead Act of 1916 receives title to all rights in the land not reserved. 549 F.2d at 1279. 3/ A patent issued under the Act of October 2, 1917, 40 Stat. 297 4/ confers title to the surface and to everything contained within the land, and precludes the granting of a permit to prospect for oil and gas thereon. I. A. Smoot, 52 L.D. 44 (1927). So, in this case, we hold the patentee under the original Homestead Act received title to all rights in the land not specifically reserved.

[2] In Circular 1021 of July 21, 1925, 51 L.D. 167, the land offices were instructed that when nonmineral applications, i.e., homesteads, were made on lands embraced in applications for coal, phosphate, sodium, oil shale, or potash permits or leases, or in permits

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2/ 30 U.S.C. § 81, coal; 30 U.S.C. § 83, coal; 30 U.S.C. § 121, phosphate, nitrate, potash, oil, gas, asphaltic matter; 30 U.S.C. § 124, sodium, sulphur.

3/ The Circuit Court stated as follows: "This review of the legislative history demonstrates that the purposes of the Act were to provide homesteaders with a portion of the public domain sufficient to enable them to support their families by raising livestock, and to reserve unrelated subsurface resources, particularly energy sources, for separate disposition. This is not to say that patentees under the Act were granted no more than a permit to graze livestock, as under the Taylor-Grazing Act 43 U.S.C. §§ 315 et seq. To the contrary, a patentee under the Stock-Raising Homestead Act receives title to all rights in the land not reserved. It does mean, however, that the mineral reservation is to be read broadly in light of the agricultural purpose of the grant itself, and in light of Congress's equally clear purpose to retain subsurface resources, particularly sources of energy, for separate disposition and development in the public interest. Geothermal resources contribute nothing to the capacity of the surface estate to sustain livestock. They are depletable subsurface reservoirs of energy, akin to deposits of coal and oil, which it was the particular objective of the reservation clause to retain in public ownership. The purposes of the Act will be served by including geothermal resources in the statute's reservation of 'all the coal and other minerals.' Since the words employed are broad enough to encompass this result, the Act should be so interpreted." 549 F.2d at 1279.

4/ Repealed by the Act of February 7, 1927, 30 U.S.C. §§ 281-287 (1976).

or leases granted for such minerals, the nonmineral entry should be impressed with a reservation of such minerals. The reservation of coal was authorized by the Act of June 22, 1910, and reservation of the other minerals, as applicable, by the Act of July 17, 1914. Patent No. 1022090 was issued pursuant to those instructions.

[3] Every patent for public lands carries with it an implied affirmation of every fact made prerequisite to its issue, and no executive officer of the Government is authorized to reconsider the facts on which it was issued. Solicitor's Opinion, M-36539 (November 19, 1958); Amos D. Ruhl, 52 L.D. 262 (1928). Government officers may examine an issued patent to see if there is a possible basis for recommendation of initiation of a judicial suit seeking cancellation or modification of such patent.

The land within the entry which was perfected by Patent No. 1022090 was considered as nonmineral insofar as oil and gas were concerned. As these minerals were not specifically reserved in the patent, title to any oil or gas which may be discovered in the land belongs to the patentee or his successor in interest. BLM correctly and properly rejected the offer to lease M 45370 (ND).

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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Douglas E. Henriques  
Administrative Judge

We concur:

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Frederick Fishman  
Administrative Judge

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Joseph W. Goss  
Administrative Judge

