

Appeal of decision of the Utah State Office, Bureau of Land Management, declaring null and void ab initio the English Penny placer mining claim, UMC 256564.

Affirmed.

1. Public Lands: Riparian Rights -- Surveys of Public Lands: Generally

Generally, the meander line of a river is not to be treated as a boundary and when the United States conveys a tract of land by patent referring to an official plat which shows the tract to be riparian to a river, the patent conveys all the rights to the water line of that river, if navigable, or to the center of the stream if nonnavigable, except where there is fraud, gross error shown in the survey, or an intention to limit a grant or conveyance to the actual meander lines as disclosed in the facts or circumstances.

2. Mining Claims: Lands Subject to

Land which has been patented without a reservation of minerals to the United States is not available for the location of mining claims, and mining claims located on such land after it is so patented are properly declared null and void ab initio.

APPEARANCES: Donald W. Hoar, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

On May 20, 1982, Donald W. Hoar (Hoar) located the English Penny placer mining claim, UMC 256564, on land in sec. 16, T. 23 S., R. 24 E., Salt Lake meridian, Grand County, Utah. The description Hoar used in his notice of location states that: "This claim borders the east river bank on the west side and deeded property on the east side: located on area known as Lake Bottom." The included sketch of the claim depicts it as situated between the river and lot 7 of sec. 16. Lot 7 was patented by the United States, along with lots 2, 4, 8, and 9 of sec. 16, to James M. Waring on October 10, 1917, pursuant to the Homestead Act of May 20, 1862, as amended (repealed 1976, formerly codified at 43 U.S.C. § 161 (1976)).

The notice of location was filed with the Utah State Office, Bureau of Land Management (BLM), on July 30, 1982. BLM declared the claim null and void ab initio in a June 3, 1983, decision which included the following explanation: "The English Penny mining claim is entirely on lands patented out of Federal ownership without a reservation [of] locatable minerals. Therefore, these lands are not open to mining location." Hoar has timely appealed that decision.

In his statement of reasons, Hoar asserts that the land upon which he has located his claim is not patented land; he states that he has checked the pertinent survey plat on file for T. 23 S., R. 24 E., Salt Lake meridian, and argues that it is inaccurate and outdated. He claims, "Your map shows all of Lake Bottom Sec. #16 as deeded property. Not so! There are only 143.25 acres of deeded property, and these include 29.28 acres, lot #2; 21.35 acres, lot #4; 30.59 acres, lot #7; 38.24 acres, lot #8; 23.79 acres, lot #9." He then asks the question "who owns the rest of the physical property that makes up the rest of the Lake Bottom" and answers it with an assertion that other maps show BLM control over the acreage exceeding that which was patented. Appellant has also alluded to some accretion and erosion associated with the adjacent river and the riparian lands.

A review of the official survey plat for T. 23 S., R. 24 E., Salt Lake meridian, reveals that sec. 16 is divided by the Dolores River which enters the section in the northeast corner heading southward, flows westward at about midsection, turns northward at about the middle of the western half of sec. 16, curves northeasterly, and exits the section at about the halfway point of its northern border. The land in question is located on the southern portion of the neck of land created by the river course. The plat includes the usual surveying marks associated with water bodies, i.e., traverse, or meander, lines used to depict the river course. The meander lines are emphasized for lots 2, 4, 7, 8, and 9 to show that the land has been patented.

The land patented to Waring by Homestead Patent 603343 was described as: "Lots two, four, seven, eight, and nine of Section sixteen in Township twenty-three south of Range twenty-four east of the Salt Lake Meridian, Utah, containing one-hundred forty-three and twenty-five-hundredths acres, according to the Official Plat of the Survey of the said Land." Only vested water rights and the right to construct ditches or canals were reserved in the grant.

Appellant's arguments assume that the land patented to Waring was limited to an area of 143.25 acres, which is the area defined in the official survey plat by the meander lines. This assumption would make these meander lines the permanent boundary of the patented land. Appellant's claim is located between that "boundary" and the present water course.

[1] The traverse of the margin of a permanent body of water is termed a meander line. In original surveys, meander lines are not run as boundary lines, but for the purpose of defining the sinuosities of the bank or shore line, and for ascertaining the quantity of land to be attributed to that

tract. The Department's position regarding meander lines is found in the Manual of Surveying Instructions 1973, U.S. Department of the Interior, Bureau of Land Management, at pages 93-94:

The general rule is that meander lines are not run as boundaries, but to define the sinuosities of the banks of streams or other body of water, and as means of ascertaining the quantity of land embraced in the survey; the stream, or other body of water, and not the meander line as actually run on the ground, is the boundary.

See also Producers Oil Co. v. Hanzen, 238 U.S. 325 (1915); Lawrence F. Baum, 67 IBLA 239 (1982).

It is true generally that the meander line is not to be treated as a boundary and that when the United States conveys a tract of land by patent referring to an official plat which shows the tract to be bordering on a navigable body of water, the patent conveys all the land to the waterline. Chester H. Ferguson, 20 IBLA 224 (1975). A grant of land bounded by a nonnavigable river generally carries the exclusive right and title of the grantee to the center of the stream. Such a manifestation of rights is not destroyed merely by the fact that a fractional section is surveyed only to the meander line. David A. Provinse, 15 IBLA 387, 81 I.D. 300 (1974). <sup>1/</sup> Thus, regardless of whether the meandered river adjacent to lot 7 is navigable or nonnavigable, ownership of the land between the meander line and the water line rests with the riparian owner. There are recognized exceptions in which meander lines will serve as the boundary of a grant or conveyance, rather than the water body, namely, where there is (1) fraud, (2) gross error shown in the survey, or (3) an intention to limit a grant or conveyance to the actual traverse lines as disclosed in the facts and circumstances. Utah Power & Light Co., 6 IBLA 79, 79 I.D. 397 (1972). Appellant has presented no evidence that these exceptions apply in this case. Thus, it must be concluded that the land in issue is not public land.

It is well established that the Department has no jurisdiction over mining claims located on land patented without a reservation of minerals to the United States, and such claims are properly declared null and void ab initio. Nels Swanberg, 74 IBLA 249 (1983); Harry J. Pike, 67 IBLA 100 (1982). A patent issued in 1917 pursuant to the Homestead Act reserves to the United States only those minerals specifically mentioned in the patent as reserved or excluded. See Lee E. Williamson, 48 IBLA 329 (1980). No assertion has been presented that the patent excluded the mineral estate from conveyance.

Since Hoar has not established that the land at issue was available for mineral entry when he located his claim, BLM properly declared his claim null and void ab initio.

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<sup>1/</sup> Title to land which has been added by accretion is also deemed acquired by a patentee, or his successor, as the riparian owner. See Ralph F. Rosenbaum, 66 IBLA 374, 89 I.D. 415 (1982) (navigable river).

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.

C. Randall Grant, Jr.  
Administrative Judge

We concur:

Franklin D. Arness  
Administrative Judge

Gail M. Frazier  
Administrative Judge

