

WALTER AND MARGARET BALES MINERAL TRUST

IBLA 84-459, 84-460, 84-461,
84-462, 84-463

Decided November 27, 1984

Appeals from decisions of the Montana State Office, Bureau of Land Management, denying applications for patent corrections. MC 03711, MC 03736, MC 014154, MC 044028, and MC 044029.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Correction of Conveyance Documents -- Patents of Public Lands: Reservations

Sec. 316 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1746 (1982), provides that the Secretary may make corrections of errors in any document of conveyance previously issued by the Federal Government to dispose of public lands. "Error" is defined in 43 CFR 1865.0-5(b) as "the inclusion of erroneous * * * reservations * * * in their entirety or in part, in a patent or document of conveyance as a result of factual error. This term is limited to mistakes of fact and not of law."

2. Act of March 3, 1909 -- Act of June 22, 1910 -- Federal Land Policy and Management Act of 1976: Correction of Conveyance Documents -- Patents of Public Lands: Reservations

Applications for correction of patents are properly denied where the applicant is seeking to have coal rights transferred to it which were reserved in patents pursuant to the Act of Mar. 3, 1909, 30 U.S.C. § 81 (1982), or the Act of June 22, 1910, 30 U.S.C. §§ 83-85 (1982). Such reservations were not a product of mistake or error. The Department of the Interior was required by those Acts to include the reservations.

APPEARANCES: H. S. Rasmussen, Esq., Sheridan, Wyoming, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

The Walter and Margaret Bales Mineral Trust (Trust) has appealed five separate March 22, 1984, decisions of the Montana State Office, Bureau of
84 IBLA 29

Land Management (BLM), each rejecting an application for patent correction filed by the Trust. 1/

The relevant factual background concerning each of the patents was set forth by BLM in an April 7, 1982, letter to counsel for the Trust. 2/ These facts are undisputed. BLM stated in the letter:

MC 03711
William C. Dodds
Desert Land Entry
Patent No. 480380 - Dated June 28, 1915

Desert land entry was filed by Wm. C. Dodds on April 26, 1907. The lands Mr. Dodds entered were withdrawn for (coal) classification on July 6, 1910, by Executive Order - Montana No. 1. The Act of March 3, 1909, states that entryman who entered the land before the land was classified as being chiefly valuable for coal, may elect to receive a patent which would contain a reservation to the United States of all coal in said lands. Patent issued June 28, 1915, subject to the limitations of the 1909 Act. The lands were classified as being chiefly valuable for coal on January 26, 1924, by Order of Restoration - Montana No. 81.

MC 03736
Nelson G. Pike, Assign of Millard Childers
Desert Land Entry
Patent No. 475959 - Dated June 1, 1915

A desert land entry was filed by Nelson G. Pike in June of 1907. The lands Mr. Pike entered on were withdrawn for classification on July 6, 1910, by Executive Order - Montana No. 1. The Act of March 3, 1909, states that entryman who entered the land before the land was classified as being chiefly valuable for coal, may elect to receive a patent which would contain a reservation to the United States of all coal in said lands. Patent issued June 1, 1915, subject to the limitations of the Act of March 3, 1909. The lands were classified as being chiefly valuable for coal on January 26, 1924, by Order of Restoration - Montana No. 81.

MC 014154
George Ramsey
Forest Lieu Selection
Patent No. 718020 - Dated November 8, 1919

A forest lieu selection was filed September 16, 1899, by George Ramsey. On November 8, 1919, an unrestricted patent was

1/ Counsel for the Trust filed the applications in question on Aug. 3, 1983.

2/ This letter was in response to counsel's Feb. 9, 1982, letter of inquiry concerning the patents in question. Therein, BLM informed counsel that if he desired to file a formal application for correction of a conveyance document, he should "follow the procedures outlined in draft regulations 43 CFR Subpart 1865, a copy of which is enclosed."

issued on said lands. All these lands were included in Coal Land Withdrawal Montana No. 1, by Executive Order of July 6, 1910. It is apparent that the coal reservation was erroneously omitted from the patent. Patent to these lands was transferred to Levi Howes, April 30, 1920. Mr. Howes executed a quitclaim deed conveying to the United States all the coal and coal deposits in said land on July 18, 1923. The lands were classified as being chiefly valuable for coal on January 26, 1924, by Order of Restoration - Montana No. 81.

MC 044028

Bert B. Bales

Homestead Entry

Patent No. 782532 - Dated November 18, 1920

Bert Bales established residence in July 1907 and filed a Homestead Entry on October 11, 1918. The lands entered on were withdrawn for classification on July 6, 1910, by Executive Order - Montana No. 1. The Act of June 22, 1910, states that lands which have been withdrawn or classified as chiefly valuable for coal may be entered under the homestead laws. Upon satisfactory proof of full compliance with the provisions of these laws, the entryman shall be entitled to a patent which shall contain a reservation to the United States of all the coal in said lands. Patent issued November 18, 1920, subject to the limitations of the Act of June 22, 1910. These lands were classified as being valuable for coal on January 26, 1924.

MC 044029

Edith Bales

Desert Land Entry

Patent No. 802704 - Dated April 11, 1921

Edith Bales claims to have entered the land in July of 1908 but did not file a desert land entry until October 11, 1918. This land was withdrawn for classification on July 6, 1910, by Executive Order - Montana No. 1. The Act of June 22, 1910, states that lands that have been withdrawn or classified as chiefly valuable for coal may be entered under the homestead laws. Upon satisfactory proof of full compliance with the provisions of these laws, the entryman shall be entitled to a patent which shall contain a reservation to the United States of all the coal in said lands. Patent issued April 11, 1921, subject to the limitations of the Act of June 22, 1910. These lands were classified as being chiefly valuable for coal on January 26, 1924.

In its applications the Trust sought to have patents corrected to include the reserved coal or, in the alternative, to have warranty deeds issued by the United States to the Trust for the coal reserved by the patents. In its decisions BLM stated that the coal had been properly reserved, and it denied the applications.

[1] Section 316 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1746 (1982), provides that "[t]he Secretary may make

corrections of errors in any documents of conveyance which have heretofore been issued by the Federal Government to dispose of public lands."

On May 3, 1982, the Department published proposed regulations establishing procedures for the correction of conveyancing documents. 47 FR 19060, 19062 (May 3, 1982). ^{3/} In those proposed regulations "error" is defined as "the inclusion of erroneous * * * reservations * * * in their entirety or in part, in a patent or document of conveyance as a result of factual error or unintentional or inadvertent deviation from statutory or regulatory requirements." 43 CFR 1865.0-5(b), 47 FR 19062 (May 3, 1982). When these regulations were published in final on September 6, 1984 (effective October 9, 1984), the definition of "error" was changed without comment to read, "the inclusion of erroneous * * * reservations * * * in their entirety or in part, in a patent or document of conveyance as a result of factual error. This term is limited to mistakes of fact and not of law." 43 CFR 1865.0-5(b), 49 FR 35299 (Sept. 6, 1984). Thus, by regulation the Secretary has limited his authority to correct errors to mistakes of fact.

In these cases appellant alleges, in essence, that the Department made mistakes of law in including the reservations in the patents in question. Assuming such legal mistakes could be shown in these cases, they would, therefore, not be correctable pursuant to section 316 of FLPMA, given the regulatory limitation. Our review confirms, however, that the reservations were proper in each instance.

Appellant's position in each case is that the original patentees established rights in the land prior to the passage of laws reserving coal deposits and, therefore, were entitled to patents unencumbered by the reservation. The applicable law is clearly to the contrary.

[2] The history of the coal withdrawals and reservations was set forth as follows in "Ownership of and Right to Extract Coalbed Gas in Federal Coal Deposits," Solicitor's Opinion, 88 I.D. 538, 540-41 (1981):

Beginning in 1906, President Roosevelt withdrew over 75 million acres of western land containing known "workable coal" from all forms of entry (i.e. homestead, agriculture). The purpose of these withdrawals was to prevent the continued loss, by the United States, of lands valuable for coal. However, by February of 1909, there were 11,688 original homestead and desert land entries of record in lands which had been withdrawn as valuable for coal, and the issuance of final certificates on 2,771 homestead and desert land entries had been suspended pending classification of the lands for coal. H.R. Rep. No. 2019, 60th Cong., 2d Sess. 2, 5-7 (Feb. 2, 1909).

Congress, spurred by the desire to re-open these lands to entry, passed the Act of Mar. 3, 1909, 30 U.S.C. § 81 (1976), and the Act of June 22, 1910, 30 U.S.C. §§ 83-85 (1976).

The Act of 1909 provided in part that:

^{3/} Presumably, it was a prepublication draft of these regulations to which BLM referred counsel for the Trust. See note 2, supra.

Any person who has in good faith located, selected, or entered under the nonmineral land laws of the United States any lands which subsequently are classified, claimed, or reported as being valuable for coal, may, if he shall so elect, and upon making satisfactory proof of compliance with the laws under which such lands are claimed, receive a patent therefor, which shall contain a reservation to the United States of all coal in said lands, and the right to prospect for, mine, and remove the same.

30 U.S.C. § 81 (1982). The purpose of the 1909 Act was to provide relief to nonmineral claimants for land withdrawn for coal classification, whose claims were initiated in good faith before the lands were classified, claimed, or reported as valuable for coal. 4/ Instructions, 40 L.D. 418 (1912). Because of the considerable time involved in the actual classification of the lands, the Act allowed the claimant to elect to receive a patent with a coal reservation. Id.; Leroy Moore, *supra*.

The Act of 1910 opened the surface of lands withdrawn or classified as coal lands or valuable for coal to entry under certain laws. That Act also provided that those who had initiated nonmineral entries, selections, or locations in good faith under those laws, prior to June 22, 1910, on lands withdrawn or classified as coal land could perfect those entries under the applicable laws, but that the patent should contain a coal reservation. 30 U.S.C. § 83 (1982); Instructions, *supra*.

Appellant argues now that the entrymen's rights were not defeated because when they made valid entries they "had a vested right in all of the lands, including the surface and subsurface estates." Such an argument ignores the law.

An essential prerequisite to relief under the 1909 and 1910 Acts is that the entry of the claimant be in good faith. See Christie v. Great Northern Ry. Co., 284 F. 702, 704 (9th Cir. 1922). Thus, an entry made for the purpose of obtaining the subsurface mineral resources would not have been a good faith entry, and the person would not have been entitled to a patent. In each case herein there is nothing to suggest that any of the individuals was operating other than in good faith. Each person received a patent with the coal reservation. 5/ There is no record of objection by the patentees to this procedure. 6/ In fact, objection would have been inconsistent with the purposes of the coal acts.

4/ Withdrawal of lands for coal classification constitutes a claim or report of coal value within the meaning of the 1909 Act. Leroy Moore, 40 L.D. 461 (1912).

5/ In one instance forest lieu patent 718020 was issued to one George Ramsey on Nov. 8, 1919, without a coal reservation. However, the General Land Office realized that this was a mistake, and it subsequently secured a quitclaim deed from Ramsey's successors in interest conveying the coal rights in the land to the United States.

6/ In Donald K. Miller, A-28774 (Aug. 7, 1962), the Department held that a petition to amend a patent, pursuant to the Act of July 17, 1914, 30 U.S.C. § 121 (1958), to eliminate a mineral reservation to the United States was

Appellant cites numerous cases in support of his contention that appellant's predecessors in interest had vested rights to patent without reservation. None of those cases are controlling, however. There is no evidence that any of the original patentees had done all acts necessary to establish a vested right to patent, including paying the full purchase price for the land. See Wyoming v. United States, 255 U.S. 989, 997-98 (1921). But cf. California Portland Cement Co., 83 IBLA 11 (1984) (payment of purchase price for patent not required to "perfect" unpatented mining claim).

A valid existing right is distinguished from a vested right by degree. A vested right arises when all the statutory requirements required to pass equitable and legal title have been satisfied. "The Bureau of Land Management Wilderness Review and Valid Existing Rights," Solicitor's Opinion, 88 I.D. 909, 912 (1981). Thus, appellant has failed to realize the critical distinction. While the claimants in these cases may have established rights as against other persons by their entries or selections, and even against the Secretary to the extent that their fulfillment of the legal requirements of the laws governing their entries or selections obligated the Secretary to convey the land to them, all else being regular, their rights did not vest prior to the coal withdrawal involving the lands in question.

The law is that only Congress can condition or limit a title conveyed by patent, and the Secretary, as an agent of Congress, can reserve only what is authorized by Congress. Shaw v. Kellogg, 170 U.S. 312, 337-38 (1898); Deffebach v. Hawke, 115 U.S. 392, 406 (1885). Pursuant to the coal acts, Congress directed that patents contain the coal reservation. Thus, the reservations in the patents in these cases were required by Acts of Congress. The reservations were not made in error or by mistake.

BLM properly denied the applications in these cases. Likewise, to the extent appellant's request for warranty deeds might be considered an application for conveyance of mineral interests pursuant to section 209(b) of FLPMA, 43 U.S.C. § 1719(b) (1982), such a request would also be properly denied on the basis of the present record.

Such application may be approved only where there are no known mineral values in the land or where the reservation of minerals in the United States is interfering with or precluding appropriate nonmineral development of the land and such development is a more beneficial use of the land than mineral development. Mr. & Mrs. E. J. Wright, 83 IBLA 92 (1984); Denman Investment Corp., 78 IBLA 311 (1984). However, satisfaction of the conditions does not mandate conveyance. Section 209(b) of FLPMA is discretionary, and the Secretary may reject an application where the record shows that conveyance would not be in the public interest. Id. The record shows in each of these cases

properly rejected where that patent had been outstanding for over 7-1/2 years and the patentee had acquiesced in the reservation. In addition, in Brennan v. Udall, 379 F.2d 803 (10th Cir. 1967), cert. denied, 389 U.S. 975 (1967), the court stated that where a homestead entryman had accepted a patent with a mineral reservation including oil shale, "an attack on it by his successors in interest almost fifty years after its issuance comes too late." Id. at 808.

that the lands are still classified as being valuable for coal, and there is no evidence concerning any proposed nonmineral development of the land.

Appellant further argues that reservation of the coal by acts passed subsequent to entry represents a taking without due process of law. In response to this apparent challenge to the constitutionality of the coal acts, we point out that the Department of the Interior, as an agency of the executive branch of Government, is not the proper forum to decide whether a statute enacted by Congress is unconstitutional. Joseph A. Barnes, 78 IBLA 46, 90 I.D. 550 (1983).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Bruce R. Harris
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

R. W. Mullen
Administrative Judge

