

DAVID C. BROOKENS

IBLA 84-697

Decided January 30, 1985

Appeal from a decision of the Oregon State Office, Bureau of Land Management, declaring lode mining claims null and void ab initio. OR MC 62985, OR MC 66003, OR MC 66004, and OR MC 67322.

Affirmed.

1. Mining Claims: Lands Subject to -- Patents of Public Lands: Effect

When the United States patents "nonmineral" land to the State of Washington in exchange for State land located within a national forest, the issuance of a patent constitutes a conclusive determination by the United States that the land was nonmineral in character, and, in the absence of fraud, any subsequent identification or discovery of minerals thereon does not operate to void the conveyance by the United States or to create a reservation of the minerals in the United States. Therefore, mining claims located on "nonmineral" land patented to the State without reservation of the mineral estate are null and void ab initio, even though the State at one time mistakenly concluded that the patent did not convey the mineral estate.

APPEARANCES: David C. Brookens, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

On June 26, 1984, David C. Brookens (appellant) filed a notice of appeal of the May 22, 1984, Oregon State Office, Bureau of Land Management (BLM), decision declaring four of his lode mining claims null and void ab initio. Brookens failed to submit timely a statement of reasons for appeal and therefore, pursuant to 43 CFR 4.412, on November 7, 1984, the Board dismissed Brookens' appeal. On November 19, 1984, the Board received a petition for reconsideration from appellant. By memorandum of December 11, 1984, BLM responded to Brookens' petition. We hereby vacate our order of dismissal and grant Brookens' petition for reinstatement of his appeal.

The mining claims which are the subject of this appeal are OR MC 62985, OR MC 66003, OR MC 66004, and OR MC 67322, known as the May Creek Quarry Nos. 30, 35, 36, and 37, respectively. They were located by appellant on

May 3, August 5, August 5, and August 29, 1983, respectively. The claims embrace land in the E 1/2 NW 1/4 of sec. 11, T. 27 N., R. 9 E., Willamette Meridian, Snohomish County, Washington.

The land embraced by the subject claims was patented to the State of Washington on May 26, 1978, patent number 46-78-0051, which in exchange for this and other land, relinquished to the United States certain State land located within the Snoqualmie National Forest. The forest exchange was authorized pursuant to the Act of March 20, 1922, as amended, 16 U.S.C. § 485 (1982) (which provides that the lands to be patented shall be "nonmineral in character"), and section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1716 (1982).

The controversy in this case has its roots in this Snoqualmie forest land exchange. Specifically, the record shows that for a time the State erroneously concluded that mineral rights were not conveyed to it in this land exchange. 1/ Thus, both the United States and the State of Washington denied owning the mineral interest in the land on which appellant sought to acquire mineral rights. Consequently, the State rejected Brookens' State application for a mining contract on the subject lands and the United States declared Brookens' Federal mining claims null and void ab initio.

Evidence that at one time the State denied ownership of the mineral interest in the subject land is contained in a February 24, 1983, letter from the Department of Natural Resources, State of Washington, to Brookens. 2/ Therein, an official from the Lands Division stated "[the] NW 1/4, less SW 1/4, Section 11, Township 27 North, Range 9 East, W.M. * * * is not open for application [for a mining contract] because the land acquired by the

1/ As of Apr. 6, 1984, if not earlier, the State recognized its ownership of the mineral interest in the subject lands. This is evidenced by a copy of an Apr. 6, 1984, letter from the Office of the Attorney General of the State of Washington to BLM which states in part:

"In a lawsuit against the State of Washington, the validity of certain mining claims is in issue. The dispute concerns the NW 1/4 NW 1/4 and E 1/2 NW 1/4 of Sec. 11, Twp. 27 N, R 9 E, Snohomish County, Washington.

"A David C. Brookens claims an unpatented BLM mining claim to these parts. My records show the mineral rights are owned by the following: * * * NW 1/4 NW 1/4 -- Wallace Timber Company[,] E 1/2 NW 1/4 -- State of Washington." (Emphasis added.)

The record is unclear as to whether Brookens was informed of the State's reversal on this point.

2/ In support of his position that the State disclaimed ownership of the mineral estate in the lands embraced by his mining claims, Brookens initially submitted a copy of a State of Washington, Department of Natural Resources Order 84-172 (DNR 84-172), wherein the State said that it did not own mineral rights on NW 1/4 NW 1/4 of sec. 11, T. 27 N., R. 9 E., Willamette Meridian. Appellant amended his petition on Nov. 20 to note that his claims were located on the "E 1/2 NW 1/4," not the "NW 1/4 NW 1/4." Therefore, on that point, DNR 84-172 was irrelevant.

state does not indicate the mineral rights." ^{3/} In response, appellant informed the State that according to the U.S. Deeds & Records of Patent "the mineral rights of the E 1/2 NW 1/4, Section 11, 27 N, 9 E less patented mines, are in fact with Washington State."

After the State denied owning mineral rights to the land in question appellant located the subject claims under the Federal mining law. However, soon thereafter, BLM, in its May 22 decision, declared the Federal claims null and void ab initio because "the land has been transferred from Federal ownership by patent conveyance without reservation of minerals to the United States prior to the date of location of your claims."

Brookens, in his November 15, 1984, petition for reconsideration, argues that the State of Washington "has disclaimed ownership to mineral rights of said property, thus said mineral rights were with the United States prior to location by David C. Brookens."

BLM, in its December 11, 1984, response to Brookens' petition for reconsideration states:

On May 26, 1978, these lands were patented to the State of Washington with no reservation of minerals. * * * The lands embraced by the claims left Federal ownership together with the mineral estate for these lands prior to the location of the claims. The claims, therefore, are null and void ab initio.

[1] We affirm BLM. The patent and the authorizing statute, the Act of March 20, 1922, conclusively show that on May 26, 1978, the United States patented to the State the surface and mineral estate of the land embraced by appellant's claims. First, while there are two mineral reservations listed in the patent, neither reservation affects the land in this appeal. ^{4/} Second, although the land patented to the State was "nonmineral" in character (16 U.S.C. § 485 (1982)), a patent of "nonmineral" land must be distinguished from a patent of land subject to a mineral reservation. United States v. Union Pacific R.R., 353 U.S. 112 (1957). The issuance of the patent for "nonmineral" land constitutes a conclusive determination by the United States that the land was nonmineral in character. In the absence of fraud, the fact that, subsequent to the issuance of the patent, minerals are identified or discovered on "nonmineral" land does not operate to void the conveyance or

^{3/} In October 1984, pursuant to DNR 84-172, the State rejected all of appellant's applications, filed on May 17, 1984, on the subject land, including applications for mineral lease, rock purchase, and mining contracts. The basis for the rejection was in part that the applications failed to include an environmental checklist, plan of operation, and any required waiver of damage. In DNR 84-172, the State did not disclaim ownership of the mineral estate in the land embraced by appellant's claims. ^{4/} The NW 1/4 NW 1/4 of sec. 11, T. 27 N., R. 9 E., Willamette Meridian, Washington, was reserved to Wallace Timber Company. The NE 1/4 NW 1/4, and the SE 1/4 NW 1/4 of sec. 11, i.e., the E 1/2 NW 1/4 of sec. 11, was unreserved.

create a mineral reservation for the United States. See Burke v. Southern Pacific R.R., 234 U.S. 669 (1914); Barden v. Northern Pacific R.R., 154 U.S. 288 (1894); Silver Buckle Mines, Inc., 84 IBLA 306 (1985); Leo Crowley, 84 IBLA 7 (1984); Moise & Leon Berger, 82 IBLA 253 (1984).

Moreover, the State's failure to recognize its mineral interest has no effect on the status of the legal title. A patent transfers legal title from the United States and removes the land from the Department of the Interior's jurisdiction. Hank Patterson, 71 IBLA 109 (1983). Thus, Brookens' argument that the United States owns the mineral rights because the State disclaimed ownership to those rights is without merit. BLM properly concluded that appellant's claims were null and void ab initio. See Ronald R. Graham, 77 IBLA 174 (1983).

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.

Edward W. Stuebing
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

