

AUGUST F. PLACHTA

IBLA 85-53

Decided September 16, 1985

Appeal from a decision of the Montana State Office, Bureau of Land Management, declaring lode mining claim null and void ab initio. MMC 084575.

Affirmed.

1. Patents of Public Lands: Reservations -- Railroad Grant Lands

Language excluding mineral lands which was included in a patent of railroad grant lands does not operate as a mineral reservation or diminish the estate vested in the grantee upon later discovery of minerals in the land. The issuance of a railroad grant lands patent generally constitutes a conclusive determination by the United States of the nonmineral character of the land.

2. Mining Claims: Lands Subject to -- Patents of Public Lands: Reservations

Where land has been patented under a railroad land grant and only the surface estate has been reconveyed to the United States, a mining claim located on such land is properly declared null and void ab initio because the United States does not own the mineral deposits in the lands.

APPEARANCES: August F. Plachta, Rollins, Montana, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

August F. Plachta appeals from a decision of the Montana State Office, Bureau of Land Management (BLM), dated September 1, 1984, declaring the Silver Critter #1 lode mining claim null and void ab initio. The claim was located on November 5, 1981, in the NW 1/4 sec. 11, T. 18 N., R. 28 W., Principal Meridian, Montana, and recorded with BLM on December 24, 1981. BLM noted in its decision that all of sec. 11 had been patented without a reservation of minerals and that only the surface had been reconveyed to the United States.

On appeal Plachta claims there are valuable minerals on his claim. He asserts the original patent excluded mineral lands. While he admits the

reconveyance document reserved the minerals, his position is that the area of his claim qualifies as mineral land, and, therefore, it never passed in the original grant.

The 1902 patent was a conveyance to the Northern Pacific Railway Company made pursuant to one of the land grants to the railroads, in this case the Act of July 2, 1864, 13 Stat. 365. Appellant is correct that the patent excepted from its purview "'All Mineral Lands' should any such be found in the tracts aforesaid, but this exclusion and exception, according to the terms of the Statute, 'shall not be held to include iron or coal' lands."

[1] The Board in Diane B. Katz, 48 IBLA 118, 119-20 (1980), concisely set forth the historical interpretation of the mineral lands exception of railroad grants, as follows:

In Central Pacific R. R. Co. v. Valentine, 11 L. D. 238 (1890), Secretary Noble ruled that discovery of the mineral character of land at any time prior to the issuance of the patent for it requires exclusion of the land from any railroad grant which contains a provision excepting all mineral lands. This was in contrast to determining the status of the land for other purposes on the date that the route of the railroad line was definitely fixed. This construction was upheld in Barden v. Northern Pacific Railroad Co., 154 U.S. 288, 329-32 (1894).

Until 1903, patents issued under the Railroad Grant Acts in most instances contained language excepting mineral lands. Since this language might have been construed as allowing the Federal Government to reclaim lands for which patent had issued if they later were found to contain mineral reserves, a railroad company requested that the Secretary of the Interior eliminate the excepting language from its patents. The Secretary reviewed pertinent decisions of the Supreme Court and concluded that the issuance of a patent under the Railroad Land Grant Acts is determinative of the nonmineral character of the lands for the purposes of the grant. Northern Pacific Railway Co., 32 L. D. 342, 344 (1903). The Secretary concluded with a directive to the General Land Office to exclude the excepting language from future railroad land grant patents.

The Supreme Court subsequently reviewed the same issue in Burke v. Southern Pacific R.R. Co., 234 U.S. 669 (1914). The Court concluded that the General Land Office was without authority to issue patents with language excepting mineral lands because the granting Act contemplated that only nonmineral lands would be patented and that the patents would unconditionally pass title.

In summary, once patents issued, the railroad company held full and complete title to the lands. The minerals were not reserved to the United States because mineral lands could not be included in a railroad grant.

Appellant's assertion that his claim contains valuable minerals has no bearing on the 1902 grant. The patent constitutes conclusive evidence of the nonmineral character of the land. Therefore, in 1902 the United States patented the land in question without a reservation of minerals.

[2] On October 16, 1952, Anaconda Copper Mining Company reconveyed sec. 11 to the United States. The deed, however, reserved to the grantor "All minerals, of any nature." BLM properly declared the Silver Critter #1 null and void ab initio because the United States does not have title to the minerals in the lands in question.

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.

Bruce R. Harris
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

Gail M. Frazier
Administrative Judge

