

Appeal from a decision of the California State Office, Bureau of Land Management, rejecting application for conveyance of Federally owned mineral interest. CA-19704.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Reservation and Conveyance of Mineral Interest--Patents of Public Lands: Corrections--Patents of Public Lands: Effect--Patents of Public Lands: Suits to Cancel

Where, upon the filing of an application for conveyance of a Federally owned mineral interest, the record shows that the mineral interest previously had been conveyed by the United States to another party, BLM properly rejects the application. However, where the record also shows that the applicant, rather than the patentee, was an existing record owner of the surface estate within the meaning of sec. 209(b)(2) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. | 1719(b)(2) (1982), at the time the United States conveyed the mineral interest, BLM should determine whether the patent may be corrected in accordance with sec. 316

of the Federal Land Policy and Management Act of 1976, 43 U.S.C. | 1746 (1982), and failing that, recommend a suit to cancel the patent.

APPEARANCES: Michael L. Jensen and Jerilee A. Jensen, pro sese.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Michael L. and Jerilee A. Jensen have appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated January 8, 1987, rejecting their application for conveyance of the Federally owned mineral interest in 120 acres of land described as the N\ SE^ and SE^ SE^ sec. 24, T. 43 N., R. 8 W., Mount Diablo Meridian, Siskiyou County, California (CA-19704), pursuant to section 209(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. | 1719(b) (1982).

The Jensens filed their application on November 24, 1986. Along with their application, the Jensens submitted a copy of a grant deed, dated June 29, 1983, under which William G. and Charlotte C. Vasey conveyed their fee title interest in the subject lands to the Jensens. The grant deed expressly excepted and reserved to the United States "all the coal and other minerals."

In its January 1987 decision, BLM rejected the Jensens' application because "the United States holds no further interests in the subject land." BLM explained that the United States had originally patented the land to Paul C. Carter on April 1, 1939 (Patent No. 1101973), reserving to the United States "all the coal and other minerals," and that subsequently, on December 1, 1983, the United States had quitclaimed all right, title, and interest in the "coal and other minerals" to the Vaseys and Richard A. and Diane B. Kenney (Patent No. 04-84-0014). The Jensens have appealed from the January 1987 BLM decision.

In their statement of reasons for appeal, appellants contend that BLM erroneously issued patent No. 04-84-0014 on December 1, 1983, to the Vaseys and the Kenneys, when BLM knew or should have known that the surface estate in the land in question was then owned by appellants. Appellants request that patent No. 04-84-0014 be rescinded and that appellants' application for conveyance of the Federally owned mineral interest be approved in order to further the objectives of section 209(b) of FLPMA and its implementing regulations by consolidating the surface and subsurface or mineral owner- ship. See 43 CFR 2720.0-2.

BLM has provided the Board with a copy of the case file concerning the December 1983 conveyance to the Vaseys and the Kenneys. That record shows that the Vaseys and the Kenneys filed an application for conveyance of the Federally owned mineral interest (CA-12938) on June 23, 1982, requesting title to that interest in 280 acres described as the E\ sec. 24, "excepting therefrom the southwest quarter of the southeast quarter," and representing therein that they were the "existing record owner(s)." Along with their application, the Vaseys and the Kenneys provided copies of grant deeds of that land from Cledith E. and Kay S. Davenport to the Vaseys on November 15, 1976, and from the Vaseys to the Vaseys and the Kenneys in undivided one-half interests on March 15, 1979.

By decision dated August 26, 1982, BLM suspended application CA-12938 and required the applicants to submit proof of ownership within 30 days of receipt of the decision. BLM stated that a "copy of the current title insurance policy, showing title vested in [the Vaseys and the Kenneys] is required." On September 15, 1982, the applicants provided BLM with a copy of title insurance policy No. S-L 025786 issued by the Title Insurance and Trust Company. That policy stated that fee title in the E\ sec. 24, excepting the SW^ of the SE^, was vested in the Vaseys as of the date of the policy, December 3, 1976. On a copy of the March 1979 grant deed to the Vaseys and the Kenneys, also submitted, was the notation: "This transaction

wasn't insured." By decision dated August 18, 1983, BLM approved conveyance to the Vaseys and the Kenneys, subject to the fulfillment of certain conditions. The applicants complied timely with the conditions on September 12, 1983. Subsequently, on December 1, 1983, BLM issued patent No. 04-84-0014, thereby quitclaiming all right, title, and interest to "all the coal and other minerals" in the 280-acre parcel in sec. 24 to the Vaseys and the Kenneys.

[1] Section 209(b)(1) of FLPMA provides that the Secretary of the Interior may convey Federally owned mineral interests "where the surface is or will be in non-Federal ownership" and (1) there are no known mineral values in the land or (2) the reservation of the mineral rights in the United States is interfering with or precluding appropriate nonmineral development of the land which is a more beneficial use of the land than mineral development. 43 U.S.C. | 1719(b)(1) (1982); see Richard L. Dickard, Sr., 90 IBLA 83 (1985); Dean A. & Craig D. Clark, 53 IBLA 362 (1981). Section 209(b)(2) of FLPMA further provides that conveyance of Federally owned mineral interests "shall be made only to the existing or proposed record owner of the surface." 43 U.S.C. | 1719(b)(2) (1982). In regulations implementing section 209(b) of FLPMA, the Department defined the term "[p]rospective record owner," in relevant part, to mean a "person who has a contract or other agreement to purchase a tract of land that is in non-Federal ownership with a reservation of minerals in the United States." 43 CFR 2720.0-5(a).

At the time of filing their application for conveyance of the Federally owned mineral interest on June 23, 1982, the Vaseys and the Kenneys each had an undivided one-half interest in the surface estate of the N\ SE^ and SE^ SE^ sec. 24. ^{1/} However, at the time of the December 1, 1983, conveyance of the Federally owned mineral interest to the Vaseys and the Kenneys, appellants held the Vaseys' undivided one-half interest in the subject 120 acres by virtue of the June 29, 1983, grant deed from the Vaseys. There is no evidence in the record that, at that time, the Kenneys had also conveyed their undivided one-half interest in that land to appellants or any other party. Therefore, apparently fee title to the surface estate of the 120 acres was held by appellants and the Kenneys. Accordingly, the conveyance of the Federally owned mineral interest to the Vaseys and the Kenneys was not made to the "existing or proposed record owner of the surface," as required by section 209(b)(2) of FLPMA. At the time of that conveyance, the Vaseys, the Kenneys and the Jensens all had varying interests in various parts of the 280-acre parcel.

^{1/} It is not clear whether the Vaseys and Kenneys each held undivided 1/2 interests in the remainder of the 280 acres at that time. With their statement of reasons appellants have provided a list of conveyances and copies of recorded documents relating to the 280 acres for which the Vaseys and Kenneys sought the Federally owned mineral interest. The Vaseys purchased the 280 acres in 1976. In 1979 they conveyed an undivided

However, regardless of BLM's mistake in issuing the patent, such patent, together with the prior patent of the surface estate, precludes the Department from adjudicating any rights or affecting title with respect to that land where the United States no longer has jurisdiction over the land. Germania Iron Co. v. United States, 165 U.S. 379, 383 (1897); John P. S. Voght, 9 L.D. 114 (1888). Accordingly, we conclude that BLM properly rejected appellants' application for conveyance of the mineral interest in the N\ SE^ and SE^ SE^ sec. 24 where that interest had already passed from United States ownership. Gale & Erma Doggett, 92 IBLA 316 (1986); James & Gloria Eldorado, 82 IBLA 9 (1984); Nels Swanberg, 74 IBLA 249 (1983); Bryan N. Johnson, 15 IBLA 19 (1974); Dorothy H. Marsh, 9 IBLA 113 (1973).

BLM's failure to convey the subject Federally owned mineral interest to the "existing" record owners of the surface estate resulted from a mistake of fact. The case file in CA-12938 indicates that BLM was unaware that the Vaseys had conveyed their interest in the N\ SE^ and SE^ SE^ sec. 24 to appellants as of the time of the December 1, 1983, conveyance. BLM has authority under section 316 of FLPMA, 43 U.S.C. | 1746 (1982), to correct a mistake of fact in a patent, with the consent of the existing owners. See 43 CFR Subpart 1865; Lone Star Steel Co., 101 IBLA 369 (1988); Rosander Mining Co., 84 IBLA 60 (1984). Therefore, BLM should consider whether correction of the patent is possible where the patent covered 280 acres, and the Vaseys only had an interest in 160 acres at the time of conveyance. Thus, the patent could not be corrected merely by substituting the Jensens for the Vaseys.

In the event that BLM is unable to correct patent No. 04-84-0014, BLM, in consultation with the Solicitor's Office, should recommend to the Justice Department that a suit be brought to cancel the patent. 2/ See Dorothy H. Marsh, *supra*; Everett Elvin Tibbets, 61 I.D. 397 (1954); see also United States v. Beebe, 127 U.S. 338 (1888). Appellants might then, in conjunction with the owners of the other 1/2 interest in the surface estate of the 120 acres, pursue conveyance of the mineral estate.

fn. 1 (continued)

1/2 interest in the 280 acres to the Kenneys. In 1979 the Vaseys and Kenneys sold the NW^ NE^ sec. 24 to Margarete Howell. The Kenneys conveyed their 1/2 interest in the NE^ NE^ sec. 24 to the Vaseys in 1980, and less than one week later the Vaseys sold that 40 acres to Ronald and Sandra Beerman. However, by "Deed of Partial Reconveyance," dated Jan. 19, 1981, the NW^ NE^ and NE^ NE^ sec. 24 were reconveyed to the Vaseys. Thereafter, in June 1982 the Vaseys and Kenneys filed their application for conveyance of the mineral interest in all 280 acres.

2/ BLM, in consultation with the Solicitor's Office, should also consider whether any separate action against the Vaseys is warranted, since, at the time BLM conditionally approved the Vasey/Kenney application, the Vaseys failed to disclose the conveyance of their interest in the 120 acres and, thus, apparently fraudulently induced the conveyance as to that acreage. Clearly, where there is a change in ownership prior to final action on an application for conveyance, notice of that fact should be given to BLM.

IBLA 87-280

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

I concur:

Gail M. Frazier
Administrative Judge

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