

Appeal from a decision of the California State Office, Bureau of Land Management, rejecting application for patent to railroad grant lands. CA 17757.

Appeal dismissed.

1. Railroad Grant Lands--Rules of Practice: Appeals: Hearings

An application for patent filed on behalf of the successor-in-interest to the grantee, as innocent purchaser for value from the railroad, pursuant to sec. 321(b) of the Transportation Act of 1940, is properly rejected when the land was known to be mineral in character at the time of conveyance, because title to land known to be mineral in character did not pass pursuant to the railroad grant statutes. If the applicant disputes this finding, a hearing is ordinarily required.

2. Res Judicata--Rules of Practice: Appeals: Dismissal

The principle of res judicata and its administrative counterpart, the doctrine of administrative finality, precludes reconsideration of a decision of a Departmental official in the absence of compelling legal or equitable reasons when a party or his predecessor-in-interest had an opportunity to obtain review within the Department and took no action. An appeal is properly dismissed where appellant is reapplying for patent 24 years after the prior application was rejected by final Departmental decision.

APPEARANCES: Lawrence M. Whitfield, Esq., Redding, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Lloyd D. Hayes appeals from a decision of the California State Office, Bureau of Land Management (BLM), dated June 13, 1988, rejecting application

CA 17757 filed on his behalf by the Southern Pacific Transportation Company (Southern Pacific). The application for patent for 40 acres of railroad grant lands located in the NE 1/4 SE 1/4 sec. 29, T. 12 N., R. 10 E., Mount Diablo Meridian, El Dorado County, was filed pursuant to section 321(b) of the Transportation Act of 1949, ch. 722, 54 Stat. 898, 954. 1/

Southern Pacific filed an application on July 23, 1985, for this 40-acre tract on behalf of Lloyd D. Hayes, the real party-in-interest, as part of an odd-numbered section within the limits of the grant to its predecessor, the Central Pacific Railroad Company of California (Central Pacific), by the Act of July 1, 1862, ch. 120, 12 Stat. 489, and the Act of July 2, 1864, ch. 216, 13 Stat. 356. Pursuant to these statutes the Central Pacific was granted certain alternate sections of public land, designated by odd numbers, on each side of the railroad line, if the land had not been sold, reserved, or otherwise disposed of at the time the line of the road was definitely fixed. Section 3 of the Act of July 1, 1862, further provided "that all mineral lands shall be excepted from the operation of this act." 12 Stat. at 492.

Section 321(b) of the Transportation Act of 1940, ch. 722, 54 Stat. 954, required the railroads which received land grants to relinquish their claims to such lands as a condition to participation in a more advantageous rate structure. However, this statutory provision specifically allowed "issuance of patents confirming title to such lands as the Secretary of the Interior shall find have been heretofore sold by any such carrier to an innocent purchaser for value."

It appears from the record that Central Pacific conveyed "all its right, title and interest" in the E 1/2 SE 1/4 of sec. 29 by deed dated May 12, 1899, to the Idlewild Gold Mining Company. Appellant acquired his interest in the E 1/2 SE 1/4 of sec. 29 by quitclaim deed dated September 23, 1983, from First American Title Company of Tahoe (formerly Tahoe Title Guaranty Company). Appellant's application for the NE 1/4 SE 1/4 of sec. 29 was filed in July 1985.

On June 13, 1988, BLM issued its decision rejecting appellant's application for patent. BLM explained that there were two issues for examination--the mineral character of the land at the time of the purchase from the railroad and the bona fides of the purchaser. In its decision BLM specified certain information deemed relevant to the mineral character of the land, taken from a mineral report dated November 9, 1987, prepared by BLM geologist Larry M. Vredenburg. Information concerning the discovery of gold in the vicinity of the subject land in 1848 and 1849 and the location of several mining claims in the E 1/2 SE 1/4 of sec. 29 from 1890 through 1892 was cited as relevant. BLM also referred to geologic maps, published in 1894, 1896, and 1981; a mining survey plat approved in 1871; and assay certificates showing results of samples taken from the E 1/2 SE 1/4 of sec. 29. In addition, BLM explained the significance of the fact that the land is located

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1/ Repealed, Act of Oct. 17, 1978, P.L. 95-473, § 4(b), 92 Stat. 1466 ("except for rights and duties that matured" prior to repeal).

within the Garden Valley Mining District and lies within the Mother Lode Belt, on a branch or extension of the productive Greenwood Seam Belt which was recognized as a distinct gold-bearing vein system by the 1870's. BLM noted an 1894 California Mining Bureau Report which stated that the Madrone Mine, whose workings are partially on the subject land, was developed by a 40-foot-deep shaft which prospected a sulfide rich quartz vein. Based on the geologic information included in the record, BLM determined that the land in question was known to be mineral in character prior to the date of purchase by Idlewild in 1899. BLM further found that Idlewild was not an "innocent purchaser" for value within the meaning of section 321(b) of the Transportation Act. Accordingly, BLM rejected appellant's application.

In his notice of appeal, appellant has disputed the evidence that the land was mineral in character at the time of the railroad grant or the conveyance to Idlewild, as well as the finding that Idlewild was not an innocent purchaser for value. Appellant also submitted a mineral report prepared for him by a consultant in rebuttal to the mineral report relied upon by BLM. Appellant has requested an evidentiary hearing, asserting the existence of material issues of fact. This case has been given expedited review in order to resolve the threshold determination required by the hearing request.

[1] A finding that title to the land did not pass to the grantee of the railroad company requires a finding that the land at issue was known to be mineral in character either at the date of definite location of the railroad line, at the date of original sale by the railroad, or at any time in between, and that the purchaser should have known that the land was mineral in character and thus excepted from the railroad grant at the time of the purchase from the railroad. Southern Pacific Transportation Co., 23 IBLA 232, 246, 83 I.D. 1, 6-7 (1976), appeal filed, Hayes v. Southern Pacific Transportation Co., No. 79-954 PCW (E.D. Cal. filed Dec. 10, 1979). <sup>2/</sup> This was precisely the finding made by the BLM decision in this case, based on a detailed analysis of what was known about the land at the time. When BLM determines that title to railroad grant lands did not pass because they were mineral in character, and the railroad (or its successor-in-interest) disputes this finding, the issue is properly referred for an evidentiary hearing. Southern Pacific Transportation Co., supra at 253-54, 83 I.D. at 100. Accordingly, appellant's request for a hearing would ordinarily be granted. However, the circumstances of this case present a threshold issue which must first be resolved.

Appellant's application filed with BLM on July 23, 1985, stated on its face thereof that it was a "re-application for patent." Appellant noted that the prior application for patent of the E 1/2 SE 1/4 of sec. 29 had

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<sup>2/</sup> Review of the opinion of the Board in Southern Pacific Transportation Co., supra, discloses that Lloyd D. Hayes, appellant in the present case, is no stranger to litigation of railroad grant claims before the Department. In that case, he intervened as successor-in-interest by conveyance to the original grantee of the railroad for 140 acres of land in the NE 1/4 of sec. 15 of the same township involved in the present appeal.

been rejected by an earlier decision of BLM dated December 15, 1961. As a basis for submission of his re-application, appellant has asserted that the prior BLM decision was based upon a cursory mineral report, and ignored a determination by the Commissioner of the General Land Office (GLO), dated November 9, 1901, affirming the decision of the Register and Receiver, Sacramento, California, after a hearing, that so much of the E 1/2 SE 1/4 as is situated within the Buckeye and Madrone quartz claims is "mineral in character and more valuable for mining than for agricultural purposes," and that the balance of the land therein is "agricultural in character and more valuable for agricultural than for mining purposes." <sup>3/</sup>

Included in the record is a copy of the December 15, 1961, decision of BLM rejecting the prior application for patent to the E 1/2 SE 1/4 of sec. 29. This application had also been filed by the Southern Pacific Company, pursuant to section 321(b) of the Transportation Act of 1940, on behalf of the successor-in-interest to the purchaser from the railroad. The basis given by BLM for the decision was that the land was considered to be mineral in character at the time of the grant, and thus was expressly excluded from the railroad grants. Also included in the record is a copy of a letter dated December 18, 1961, from the Southern Pacific Company addressed to the Tahoe Title Guaranty Company. The letter reflects that it enclosed a copy of BLM's decision rejecting the patent application and called the attention of the applicant to "the last paragraph of the Bureau's letter in which they advise their decision becomes final 30 days from receipt of the letter, unless action is taken within that time." The case file copy of the BLM decision bears the notation "case closed" with a date of January 30, 1962. Thus, it appears from the record that no appeal of the decision was filed.

[2] Appellant acquired his interest in the claim in 1983 from the party whose application was rejected by decision of BLM in 1961. The 1961 BLM decision was final for the Department in the absence of any timely filed appeal and there is no indication that any appeal was filed. Appellant's claim was filed in 1985, almost 24 years after the claim as filed by his predecessor-in-interest had been rejected by the Department.

The doctrine of res judicata generally precludes a party from raising an issue relevant or related to a claim ruled upon in a prior judgment between the parties because the claim has been merged in the judgment and, hence, no longer exists. Turner Brothers, Inc. v. OSMRE, 102 IBLA 111, 120 (1988); see Kaspar Wire Works, Inc. v. Leco Engineering & Machine, Inc., 575 F.2d 530, 535 (5th Cir. 1978); 50 C.J.S. Judgments § 593 (1947); 46 Am. Jur. 2d Judgments §§ 383, 397, and 404 (1969). The principle of res judicata has been held applicable to administrative proceedings when an administrative agency, acting in a quasi-judicial capacity, resolves disputed issues of fact properly before it which the parties have had an

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<sup>3/</sup> The BLM decision under appeal found this 1901 decision unpersuasive as it did not involve the same issues which must be resolved in adjudicating an application by the railroad for patent--the character of the land from the date of location of the railroad to the date of purchase of the tract and whether the buyer was an "innocent purchaser" for value.

adequate opportunity to litigate. United States v. Utah Construction & Mining Co., 384 U.S. 394, 422 (1966); Turner Brothers, Inc. v. OSMRE, *supra* at 121; 4 Davis, Administrative Law Treatise § 21:2 (2d ed. 1983). As a general rule, the administrative counterpart of the principle of res judicata--the doctrine of administrative finality--precludes reconsideration of a decision of an agency official when a party, or his predecessor-in-interest, had an opportunity to obtain review within the Department and took no action. The rule is not absolute because the decisions of Departmental administrative officials, as well as decisions of the Board, are made pursuant to authority delegated by the Secretary of the Interior. The Secretary or those exercising his delegated authority may review a matter previously decided and correct or reverse an erroneous decision. See Gabbs Exploration Co. v. Udall, 315 F.2d 37, 40 (D.C. Cir. 1963), *cert. denied*, 375 U.S. 822 (1963); 50 C.J.S. Judgments § 606 (1947). Reexamination of a decision which has become final is available only upon a showing of compelling legal or equitable reasons, such as a violation of basic rights of the parties or the need to prevent an injustice. Turner Brothers, Inc. v. OSMRE, *supra* at 121; Village of South Naknek, 85 IBLA 74 (1985); Lillian Barlow, 58 IBLA 385 (1981).

We do not find that such compelling legal or equitable reasons exist in the context of this case. The decision of the Commissioner of the GLO referred to by appellant when tendering his "re-application for patent" was an affirmation of a decision of the Register and Receiver after hearing on the contest by mining claimants Fred Eden and Joseph Rodoni of the railroad's selection of these lands pursuant to the statutory grant. The contest was filed to challenge the grant as to the lands within the Madrone and Buckeye claims situated within the E 1/2 SE 1/4 on the grounds these tracts were mineral in character. The proceeding was described by the Commissioner of the GLO as a "quasi contest," a proceeding corresponding to a private contest between conflicting claimants to the public lands recognized by regulation today. 43 CFR 4.450. The record does not indicate that the Department was either a party to or a participant in this proceeding. The holding of the case was that the land situated within the mining claims was mineral in character, and hence the selection was cancelled as to the conflicts with the claims. The 1901 decision further provided that: "[I]n case said company desires to proceed with its application to select the residue of the said E 1/2 of SE 1/4 of Sec. 29, T. 12 N., R. 10 E., M.D.M., it will be necessary for it to have a survey made properly segregating said quartz mining claims" (Decision at 4). This decision as to the character of the lands within the mining claims in a private contest, to which the Department was apparently not a party, does not preclude the Department from examining the question of the character of the land within the E 1/2 SE 1/4 at such time as a patent application is presented.

Appellant has refiled his claim almost 24 years after the claim filed by his predecessor-in-interest for this land was rejected based upon a finding that the land was mineral in character. The record indicates that no appeal was taken from this decision and, hence, it became a final decision of the Department regarding this claim. Where the claim to which an appellant acquired an interest by quitclaim deed has previously been found to be invalid in a final Departmental decision, appellant could obtain no interest

in the claim as the grantor had nothing to convey. Vivian L. Ames, 99 IBLA 99 (1987). Even if it were assumed (which we hold that it has not been established) that an injustice had been done or the law misapplied such as might justify reopening a final Departmental decision, there are time limits on such reconsideration. We find that the passage of almost 24 years from a final decision to the filing of an application to reopen this proceeding militates strongly against reopening this matter, especially in view of the fact that the issue of the character of the lands at the time the location of the railroad line was fixed and at the time the land was conveyed to Idlewild Gold Mining Company becomes ever more obscure with the passage of time. See Gabbs Exploration Co. v. Udall, supra at 40-41.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

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C. Randall Grant, Jr.  
Administrative Judge

I concur:

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R. W. Mullen  
Administrative Judge

