

SOUTHERN PACIFIC TRANSPORTATION CO.,  
EUGENE F. SNOW, AND LLOYD D. HAYES

IBLA 90-331

Decided February 27, 1991

Appeal from a decision by the California State Office, Bureau of Land Management, rejecting an application for patent to public land made pursuant to section 321(b) of the Transportation Act of 1940. CACA 19871.

Affirmed.

1. Administrative Procedure: Generally -- Railroad Grant Lands

Pursuant to 43 CFR 2631.1, the Department may require applicants for patent under the Transportation Act of 1940 to provide specific proof of transfer of title.

2. Mineral Lands: Determination of Character Of -- Railroad Grant Lands -- Words and Phrases

"Innocent purchaser for value." The phrase "innocent purchaser for value" appearing in the Transportation Act of 1940 does not refer to a subjective state of mind, but indicates instead the absence of knowledge of mineral character of land sold by a land grant railroad.

3. Mineral Lands: Determination of Character -- Railroad Grant Lands

Lands may be mineral in character even though there has been no discovery of a valuable mineral on the land itself: external conditions may give mineral character to a tract. In railroad grant lands cases, mineral character is to be determined as of the time when the land was conveyed by the railroad.

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

OPINION BY ADMINISTRATIVE JUDGE ARNESS

On January 21, 1987, Southern Pacific Transportation Company, as successor-in-interest to the Central Pacific Railroad Company, filed an application for patent to a 10-acre tract near Redding, California, described as

the NW 1/4 NE 1/4 SE 1/4, sec. 29, T. 31 N., R. 5 W., Mount Diablo Meridian, Shasta County, and appearing on the official records of the Department as the N 1/2 lot 4 of sec. 29 (lot 4). The application, made pursuant to the Transportation Act of 1940, 49 U.S.C. § 65(b) (1988), was for the benefit of Eugene F. Snow and Lloyd D. Hayes, claiming to be the successors-in-interest to Alexander Ballantyne, who, in 1890, had purchased land including lot 4 from the Central Pacific Railroad Company. On March 21, 1990, the California State Office, Bureau of Land Management (BLM), rejected the application and Snow and Hayes appealed to this Board.

Lot 4 is found in a section included in a grant to the railroad by Congress pursuant to the Acts of July 1, 1862, 12 Stat. 489, 492, and July 2, 1864, 13 Stat. 356-8, subject to the proviso that the grant should not "include any mineral lands." *Id.* at section 4. The land in lot 4 was never patented to the railroad. The Act of March 3, 1887, 43 U.S.C. § 898 (1988), provided a remedy to innocent purchasers of mineral land from railroads which is preserved by the Transportation Act of 1940. Southern Pacific Transportation Co., 35 IBLA 270, 272-74 (1978). Pertinently, this later Act provides that: "Nothing in this section shall be construed \* \* \* to prevent the issuance of patents confirming the 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." 49 U.S.C. § 65(b) (1976). Appellants' application is made in reliance on this provision: they argue they are successors-in-interest to Alexander Ballantyne, who, they contend, was an innocent purchaser within the meaning of the statute.

A deed from the Central Pacific Railroad Company dated October 30, 1890, conveyed 120 acres, including lot 4, to Ballantyne in consideration of a payment of \$480. On January 9, 1891, Ballantyne conveyed the same 120-acre tract to California Sand Stone and Contracting Company, a corporation in which Ballantyne was director, for a stated nominal sum. Thereafter, J. L. Montgomery acquired land including lot 4 from the State by tax collector's deed in 1919 and then deeded it to his wife Macie Montgomery in 1920.

Appellants trace their ownership of lot 4, which was quit-claimed to them by the American Cancer Society on October 26, 1986, to a probate decree entered in proceedings in the distribution of the estate of Macie Montgomery. The decree, dated October 13, 1989, provides pertinently that "[a]ny property of the estate not now known or discovered that may belong to the estate or in which the decedent [Macie Montgomery] or the estate may have any interest shall be distributed to the AMERICAN CANCER SOCIETY." (Capitals appear in original.) BLM found that because the decree did not specifically convey lot 4, appellants had not established that they were entitled to claim to be successors to the rights acquired by Ballantyne in 1890 (Decision at 9). We affirm this finding.

[1] Departmental regulation 43 CFR 2631.1, providing standards for patent applications in the case of lands sold by railroads under authority of the Transportation Act of 1940, requires documentation of "transfers of

title" and provides that evidence of "recorded deed of conveyance may be required." The probate decree relied upon by appellants does not amount to such a showing: it does not describe lot 4, nor does it purport to transfer lot 4 to appellants' grantor, the American Cancer Society. This general provision in the decree distributing undiscovered assets cannot be said to satisfy the regulatory requirement that applicants for patent provide proof of "transfers of title." *Id.* Such a document, which does not describe the tract said to be conveyed, provides an insufficient foundation to enable the Department to patent public land. Southern Pacific Transportation Co., 54 IBLA 174 (1981). <sup>1/</sup>

[2] On the record before us, moreover, it does not appear that the 1890 sale by the railroad to Ballantyne comes within the protection of the Transportation Act of 1940. It is now well settled that the meaning of the term "innocent purchaser for value" used by the Act does not refer to the subjective state of mind of the 19th century purchaser, Alexander Ballantyne. See Laden v. Andrus, 595 F.2d 482, 488 (1979). The term is used, instead, to define the character of the land as it was known to exist at the time of sale: it refers to "absence of knowledge of its mineral character \* \* \* between the time the railroad line was definitely located and the date of purchase, for its characterization as [mineral] during that period would except it from the grant to the railroad." Southern Pacific Co., 1 IBLA 50, 77 I.D. 177, 180 (1970).

[3] To determine whether land is mineral in character is not the same as establishing that there has been a mineral discovery. *Laden v. Andrus*, *supra* at 487. To establish that land is mineral in character for purposes of deciding cases involving railroad grants it

must appear that the known conditions \* \* \* were plainly such as to engender the belief that the land contained mineral deposits of such quality and in such quantity as would render their extraction profitable and justify expenditures to that end. \* \* \* There is no fixed rule that lands become valuable \* \* \* only through actual discovery within their boundaries. On the contrary, they may, and often do, become so through adjacent disclosures and other surrounding or external conditions; and when

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<sup>1/</sup> The record indicates that Macie I. Montgomery applied to BLM to acquire lot 4 as an isolated tract on Apr. 27, 1950. Her application was rejected and the rejection affirmed on appeal on Dec. 12, 1954, for the reason that the tract was considered appropriate for development instead under the Small Tract Act. Appellants argue that this circumstance is irrelevant and does not tend to prove or disprove that lot 4 was owned by Montgomery or that she believed it was owned by her. This argument suggests that appellants believe they need not prove their claim with any specificity and ignores the positive requirements imposed on applicants for patent by 43 CFR Part 2630. It seems to assume that the subjective state of mind of Montgomery could have some effect on the validity of her claim to lot 4.

that question arises in cases such as this, any evidence logically relevant to the issue is admissible, due regard being had to the time to which it must relate. [Emphasis in original.]

Id. at 488, quoting from Diamond Coal & Coke Co. v. United States, 233 U.S. 236 (1914).

The record before us contains three mineral reports dealing with this question, two offered by BLM and one by appellants. The first BLM report, dated January 5, 1988, establishes that lot 4 is presently considered not to be mineral in character. Appellants' report, dated April 14, 1989, agrees with this conclusion and offers conclusions of its own concerning the inferences that should be drawn from the presently understood character of the land. Much data is provided by this report that was acquired during the 100-year interval between the railroad's sale to Ballantyne and the present application.

This evidence, however, is beside the point. No inferences concerning past knowledge of mineral character can be drawn from present knowledge concerning the character of the land. Southern Pacific Transportation Co., 32 IBLA 218, 220 (1977). The mineral character of land in these railroad grant cases must be determined as of the time of sale, considering the character the land was then believed to possess, in view of conditions between the time the railroad was located and the date of sale. Laden v. Andrus, supra at 489. In this case, the ending date for our inquiry into the character of lot 4 is October 30, 1890: later-acquired information cannot help answer the question of the known character of the land when it was conveyed in 1890.

The second BLM mineral report, dated March 2, 1989, deals with this period in detail. The 1989 mineral report establishes that gold was discovered in the vicinity of lot 4 in 1848. Thereafter, the mining town of Texas Springs in the Texas Springs mining district was located, in part, on lot 4. On June 27, 1863, Texas Springs was located at one corner of another active mining district. Lot 4 was the subject of hydraulic mining prior to 1890, and contains an exploratory miner's trench 200 feet long from that period. The lot is on geologic formations considered in 1890 to be productive of gold and silver, similar land in California having been proved productive. Prior to October 30, 1890, 18 mining claims were recorded in the immediate vicinity of lot 4, including a claim, patented in 1872, immediately adjacent to the lot.

Based on a review of historic materials, official records, and field examination of lot 4, the BLM mineral examiner concludes that "the subject parcel was mineral in character on and before date that the railroad sold the property to Mr. Alexander Ballantyne on October 30, 1890." We find that this conclusion is supported by a preponderance of evidence before us. Appellants have not offered evidence to establish that the land was not mineral in character in 1890, but argue, relying in part on data acquired after 1890, that it would not have been "prudent" to conclude that the land

was then mineral in character then (Statement of Reasons at 5). The issue before us, however, concerns the known character of the land in 1890, not whether, using data acquired in the interval since then, it now appears that mineral exploration of lot 4 would have been unsuccessful. 2/ On the record before us, we conclude that the 10-acre tract here at issue was known to be mineral in character on October 30, 1890, and that it cannot, as a result, be patented to persons claiming to have acquired whatever right was purchased by Ballantyne, because, in the face of the known mineral character of lot 4 as it was understood in 1890, he has not been shown to be an "innocent purchaser" within the meaning of the Transportation Act of 1940. 43 CFR 2631.1; Southern Pacific Co., supra.

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.

Franklin D. Arness  
Administrative Judge

I concur:

John H. Kelly  
Administrative Judge

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2/ Appellants' mineral report suggests that some of the workings found on lot 4 may have been caused by mining activity in the 1930's. Assuming that this observation is correct, the evidence of mining activity in the vicinity and on lot 4 itself in the late 19th century remains unchallenged. The data and conclusions provided by the mineral report offered by BLM are not directly contradicted by appellants' report, which spends much time on a stone quarry located in 1894 and other events taking place in the 20th century. Using these materials, the report draws conclusions concerning the subjective state of mind of Ballantyne, a condition not relevant to a decision in this appeal.

