



PIRTLAW PARTNERS, LTD.

183 IBLA 70

Decided November 16, 2012



United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

PIRTLAW PARTNERS, LTD.

IBLA 2012-49

Decided November 16, 2012

Appeal from a decision cancelling a patent to correct an error. COC 66879;
05-2011-0029.

Reversed and Remanded.

1. Federal Land Policy and Management Act of 1976:
Correction of Conveyance Documents--Patents of Public
Lands: Corrections

Patenting land out of Federal ownership divests the Department and this Board of jurisdiction to determine the rights of parties to that land, including recognizing of conflicting claims to those lands. BLM cannot proceed with a patent correction without the consent of the patentee whose rights would be affected. A decision purporting to cancel an appellant's patent and issue a corrected patent without first obtaining the appellant's consent and surrender of the patent it received from the United States will be reversed and the case remanded to BLM to either obtain appellant's consent and delivery of the patent, or to file suit to cancel it.

APPEARANCES: Christopher Hayes, Esq., Denver, Colorado for Pirtlaw Partners, Ltd.; Danielle DiMauro, Esq., Office of the Regional Solicitor, Lakewood, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE PRICE

Pirtlaw Partners, Ltd. (Pirtlaw) has appealed from a November 8, 2011, decision of the Colorado State Office, Bureau of Land Management (BLM), cancelling Patent No. 05-2007-0029 (Patent) and issuing Patent No. 05-2011-0016 to correct certain provisions.

Background

Pirtlaw participated in the Emerald Mountain Land Exchange (COC 66879), a complex exchange involving BLM, the State of Colorado, and numerous private parties that was designed to consolidate public lands into more manageable blocks to improve BLM's management efficiency. See Little Snake River Resource Management Plan at 29. The Exchange resulted in the issuance of 57 patents encompassing 123 parcels and approximately 15,416 acres. Pirtlaw received Patent No. 05-2007-0029 conveying Parcels 58.2, 59, 60, 62, 63, 64, 67, 69, and 70, totaling 1,568.13 acres.¹ The Patent included four reservations to the United States.

Reservation 1 reserved ditches and canals (all parcels); Reservation 2 reserved the mineral estate in its entirety (Parcels 58.2, 62, and 69); Reservation 3 reserved coal (Parcels 60 and 67); and Reservation 4 reserved oil and gas rights underlying oil and gas lease CO 39889 until that lease terminated or was relinquished, at which time all right to the oil and gas deposits would automatically vest in the patentee or successors in interest (Parcels 59, 60, 62, and 63).² The inclusion of Parcel 62³ in Reservation 4 providing for the conveyance of oil and gas rights upon expiration of the oil and gas lease clearly conflicts with the stipulated retention of all minerals in Parcel 62 under Reservation 2.

In a January 23, 2009, communication with Western Land Group, Inc. (WLG), which represented Pirtlaw and others in the land exchange, BLM informed WLG that several of the patents in the exchange contained errors and needed to be corrected. BLM stated: "The process for correcting patent error is set out in 43 [C.F.R. Subpart] 1865. Under 43 [C.F.R. §] 1865.3, BLM will issue corrected patents if the patentees return the original documents to this office." In a January 26, 2009, letter from WLG to R.L. Waltrip, president of Pirtlaw, WLG informed Pirtlaw of the error and the process for correcting it, requested return of the patent so it could be corrected, and expressed gratitude for Pirtlaw's cooperation. There is nothing in the record showing further communications between BLM and WLG or Pirtlaw regarding correction of the patent. As BLM notes, WLG did not object to correcting the patent. Answer at 3.

¹ These parcels are located in sec. 23, T. 7 N., R. 87 W., Sixth Principal Meridian, Colorado.

² As of Jan. 15, 2004, the date of the Mineral Potential Report, no wells had been drilled on the lease. Answer at 5.

³ The legal description for Parcel 62 is "lots 1, 4, 6, 8, 9, 10, and 13, sec. 23, T. 7 N., R. 87 W., Sixth Principal Meridian, Colorado." Patent No. 05-2007-0029.

Acting *sua sponte*, BLM issued a corrected patent on July 29, 2011, which removed Parcel 62 from those lands subject to the oil and gas reservation, and recorded it with the Routt County Clerk and Recorder. In the November 8, 2011, decision, the Chief, Branch of Lands and Realty, Colorado State Office, BLM, informed Pirtlaw that, “pursuant to Section 316 of the Federal Land Policy and Management Act of 1976 [FLPMA], as amended,” Patent No. 05-2007-0029 was cancelled and Patent No. 05-2011-0016 was issued to eliminate the conveyance of oil and gas rights in Parcel 62, so that all minerals in the parcel were reserved to the United States. Pirtlaw appealed.

Analysis

A. The Parties’ Arguments

Pirtlaw contends that there was no mistake of fact in the reservation language concerning Parcel 62, arguing the Patent is consistent with BLM’s Environmental Assessment (EA) No. COC-66879 and Decision Record for the Exchange and accurately reflects the language in the Exchange Agreement approved by BLM.

Citing various documents and circumstances, BLM avers that the record of the exchange consistently evinces an intent to reserve to the United States all minerals in Parcel 62. BLM argues that its action is consistent with 43 C.F.R. § 1865.3, which provides: “The authorized officer may initiate and make corrections in patents or other documents of conveyance on his/her own motion, *if all existing owners agree.*” (Emphasis added.)

B. Authority to Correct a Patent

Section 316 of FLPMA, 43 U.S.C. § 1746 (2006), confers on the Secretary of the Interior discretionary authority to correct patents or other documents of conveyance when necessary to eliminate errors. *See* 43 C.F.R. §§ 1865.0-1, 1865.0-3.⁴ The objective of a patent correction is to eliminate patent errors from the

⁴ Departmental regulations define “error” as the inclusion of erroneous descriptions, terms, conditions, covenants, reservations, provisions and names or the omission of requisite descriptions, terms, conditions, covenants, reservations, provisions and names either in their entirety or in part, in a patent or document of conveyance as a result of factual error. This term is limited to mistakes of fact and not of law.

43 C.F.R. § 1865.0-5(b); *see, e.g., Seldovia Native Association*, 173 IBLA 71 (2007);

(continued...)

chain of title pertaining to the disposal of the public lands or interests therein. 43 C.F.R. § 1865.0-2. The discretionary authority to correct patents of public land to eliminate mistakes of fact in patents has been delegated to BLM. *Steve H. Crooks and Era Lea Crooks*, 167 IBLA 39, 44 (2005) (citing *Foust v. Lujan*, 942 F.2d 712, 714-17 (10th Cir. 1991), *cert. denied sub nom.*, *Northern Arapaho & Shoshone Indian Tribes of Wind River Indian Reservation v. Foust*, 503 U.S. 984 (1992); *Mary D. Hancock*, 150 IBLA 347, 350 (1999)). Corrective relief will be granted only if BLM determines that patent correction is “warranted and appropriate.” 43 C.F.R. § 1865.1-3; *Gordman Leverich L.L.P.*, 177 IBLA 52, 60 (2009) (equity and justice must favor patent correction); *Frank L. Lewis*, 127 IBLA 307, 309-10 (1993). There is no requirement that the mistake be mutual; it may be unilateral. *Donald C. & Rebecca B. Routson*, 179 IBLA 187, 193 n.9 (2010) (citing *Mary D. Hancock*, 150 IBLA at 352 n.7); *Ray M. Chavarria*, 165 IBLA at 181; *e.g.*, *Mantle Ranch Corp.*, 47 IBLA 17, 30-34; 87 I.D. 143, 150-52 (1980).

BLM’s arguments are unavailing, because the first prerequisite to an exercise of the authority granted under section 316 of FLPMA is that the United States has title to the land in question, either because the patent has not yet been issued, or because the patentee surrenders or relinquishes the patent that was issued. Action to correct the patent cannot be taken without title to the land. The decision in *Alaska Railroad (On Reconsideration)*, 3 ANCAB 351, 86 I.D. 453 (1979), is instructive. There, the Alaska Native Claims Appeal Board (ANCAB)⁵ briefly examined the legislative history of section 316 of FLPMA in reconsidering whether FLPMA applied to lands withdrawn under the authority of the Alaska Native Claims Settlement Act of 1971, as amended, 43 U.S.C. § 1610 (1976), and whether the Secretary could unilaterally impose a right-of-way on patented lands without the patentee’s consent. ANCAB quoted the statements of Irving Senzel, then the Assistant Director for Legislation and Planning, BLM, Washington, D.C. Office.⁶ In response to concern

⁴ (...continued)

Ray M. Chavarria, 165 IBLA 161, 182 (2005); *Ramona and Boyd Lawson*, 159 IBLA 184, 190 (2003).

⁵ ANCAB was abolished effective June 30, 1982, by Secretarial Order No. 3078, dated Apr. 29, 1982, and its functions were conferred on this Board. 47 FR 26390 (June 18, 1982).

⁶ Section 316 of FLPMA apparently was based upon section 203(f) of H.R. 13777, 94th Cong., 2d Sess., 122 Cong. Rec. 23442, 23445 (1976). The language of section 203(f) had been adopted from section 211 of H.R. 5224 without significant modification. H.R. 5224 was a comprehensive Federal land management bill introduced in 1975 that was not enacted. The Senzel testimony quoted by ANCAB

(continued...)

that new terms and conditions could be inserted in a patent in the guise of correcting it, Senzel explained:

Mr. Senzel. . . . Under the law the title to the land passes when the secretary issues the patent. That land is then beyond the reach of the secretary. He cannot get to the title in any way without going to court alleging some violation of law or fraud or getting a voluntary relinquishment or reconveyance to the government so he can issue a new patent. There is no point in his issuing another patent because he has no authority.

At the same time the secretary does have authority to correct patents and the procedure is to notify the person that the patent contains an error. If he will reconvey it to the United States it will be corrected in such and such a way.

. . .

Mr. [Sam] Steiger [R-Arizona]. An error of omission could invite—if you are talking about like an error such as failing to reserve the minerals, that is a fairly significant error.

Mr. Senzel. It goes beyond the—

Mr. Steiger. It seems to me that that ought to be litigated.

Mr. Senzel. Well, this bill would just give the secretary authority to correct the patent, but he has to get the title back. And if the person does not want to reconvey the lands for the correction, it would have to be litigated. He can't just issue another patent.

Mr. Steiger. I see.

Mr. Senzel. This clause clothes him with the authority to correct it once he has title again. He can't do it in the absence of either going to court or getting agreement of the patentee that the correction should be made.

⁶ (...continued)
related to H.R. 5224.

Mr. [Jim] Weaver [D-Oregon]. Mr. Chairman, the original language of the print would not allow the secretary to make corrections if he didn't hold title. Would that give him that authority?

Mr. Senzel. I don't think so.

Mr. Weaver. No. Okay.

Before the House Committee on Interior and Insular Affairs,
Subcommittee on Public Lands, Executive Session, May 8, 1975.

Alaska Railroad (On Reconsideration), 86 I.D. at 456-57.⁷

[1] More recently, in *City of North Las Vegas*, 178 IBLA 385 (2010), the Board affirmed a BLM decision that rejected a portion of a right-of-way (ROW) grant that BLM previously had offered to the City, because the land within the rejected portion had been patented to the State of Nevada. Though the City's ROW application was still pending, BLM issued a patent for the land to the State of Nevada. On appeal, the City stated that it was improper for BLM to issue the patent without resolving the City's interests in the ROW, and argued that the Board should direct BLM to correct patent and make it subject to the ROW. The Board began its analysis of the issue as follows:

[I]t is a long-established principle that patenting the land out of Federal ownership divests the Department of jurisdiction to determine the rights of parties to that land, including recognition of conflicting claims to those lands. *E.g.*, *Germania Iron Co. v. United States*, 165 U.S. 379, 383 (1897); *Alyeska Pipeline Service Co.*, 175 IBLA 1, 2 (2008); *Eddie S. Beroldo*, 123 IBLA 156, 158, 163 (1992); *Rosander Mining Co.*, 84 IBLA 60, 62 (1985); *Henry J. Hudspeth, Sr.*, 78 IBLA 235, 238 (1984). Therefore, the Department, including this Board, has no jurisdiction to adjudicate whether the City had a valid existing right to an ROW at the time section 15 was patented to the State. . . . It necessarily follows that the Board also has no jurisdiction to direct BLM to issue an ROW to the City.

⁷ When senior officials of this Department have provided statements to Congress that have "served as the basis for legislative action, this Board is not generally disposed to apply enacted legislation in a manner inconsistent with such statements." *Hiko Bell Mining & Oil Co. (On Reconsideration)*, 100 IBLA 371, 378, 95 I.D. 1, 5 (1988), quoting *Celsius Energy Co.*, 99 IBLA 53, 76-77, 94 I.D. 394, 407-08 (1987).

178 IBLA at 382. After discussing the authority to eliminate factual errors conferred by section 316 of FLPMA, 43 U.S.C. § 1746 (2006), the Board concluded: “Where a party who is not the patentee seeks administrative correction of a patent, the Department cannot proceed with a patent correction without the consent of the patentee whose rights would be affected.” 178 IBLA at 384 n.9, citing *Rosander Mining Co.*, 84 IBLA at 64, and *Lone Star Steel Co.*, 101 IBLA 369, 373 (1988); see also *Everett Elvin Tibbets*, 61 I.D. 397, 399 (1954).

Pirtlaw has not surrendered its patent to restore title to the United States. BLM therefore could not act on its own motion to correct the patent pursuant to 43 C.F.R. § 1865.3. It follows that BLM’s decision canceling Pirtlaw’s patent and issuing the corrected patent cannot stand. The decision is reversed and the case is remanded to BLM to either obtain Pirtlaw’s consent and the Patent, or file suit to cancel it.⁷

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is reversed and this matter is remanded to BLM for further action.

_____/s/_____
T. Britt Price
Administrative Judge

I concur:

_____/s/_____
James K. Jackson
Administrative Judge

⁷ We accordingly have no jurisdiction to reach the parties’ contentions regarding the existence and circumstances of the alleged error.