

INTERIOR BOARD OF LAND APPEALS

Stacy B. Good

133 IBLA 119 (July 26, 1995)

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STACY B. GOOD

IBLA 92-546

Decided July 26, 1995

Appeal from a decision of the Montana State Office, Bureau of Land Management, declaring mining claims MTMMC 188247 through MTMMC 188266 null and void ab initio.

Affirmed.

1. Mining Claims: Land Subject to—Railroad Grants

Land which has been patented to a railroad without a reservation of minerals to the United States is not available for the location of mining claims, and a mining claim located on such land after it is so conveyed is null and void ab initio.

APPEARANCES: Stacy B. Good, pro se.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Stacy B. Good has appealed the June 18, 1992, decision of the Montana State Office, Bureau of Land Management (BLM), declaring the Good Nos. 17 through 36 mining claims (MTMMC 188247 through MTMMC 188266) null and void ab initio because the sections of land on which the claims were located were patented to the Northern Pacific Railroad without a reservation of minerals to the United States. On the same date, BLM issued a separate letter responding to numerous issues raised in a letter from appellant dated May 18, 1992, in which she contended that the United States owns the mineral rights to the land and that the patents were irregularly or fraudulently issued to the railroad. Appellant's notice of appeal refers to her May 18 letter and discusses activities on the claims. Her statement of reasons amplifies the points raised in her May 18 letter, and suggests the nullification or correction of the railroad patent. Although appellant has requested an oral hearing, we find that the documents already submitted provide a sufficient basis for the disposition of her appeal.

The claims cover sec. 13, T. 20 N., R. 18 W., Principal Meridian, Montana, which was conveyed on January 11, 1924, by patent No. 928794, and secs. 7, 9, 17, and 19, T. 20 N., R. 17 W., which were conveyed by patent No. 112 on June 27, 1904. Both patents were issued pursuant to the Act of July 2, 1864, ch. 217, 13 Stat. 365, and the Joint Resolution of May 31, 1870, 16 Stat 378. Section 3 of the 1864 Act granted to the

Northern Pacific Railroad Co. "every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile on each side of said railroad line" in the territories and 10 alternate sections per mile in the states through which it passed. The 1864 Act excluded all mineral lands from the grant and provided that the word "mineral" shall not be held to include iron or coal," 13 Stat. 368, a qualification also contained in the Joint Resolution.

Appellant's concern focusses on a proposal by the Forest Service to acquire the surface but not the mineral rights to the subject land in an exchange. She considers it improper for the mineral rights to be reserved by the private party because no mineral lands were to be conveyed in the first place. BLM's response to appellant's letter provided a detailed discussion of the authorities governing railroad patents, and except for a brief discussion later in this opinion of certain points raised by appellant, we see no occasion to revisit those issues here. Although appellant contends that BLM would administer the mineral rights if the land were reconveyed with those rights, the decision to reacquire any interest in the land rests with the Forest Service, and BLM properly advised appellant that questions concerning the exchange should be directed to an official of that agency. We have held that if the United States reacquires the surface but not the mineral rights in land previously patented to a railroad, such land is not open to the location of mining claims. Gold-West Industries, Inc., 90 IBLA 372 (1986).

Although appellant has undertaken considerable effort to identify a myriad of issues and to discuss authorities bearing on those issues, the only issue properly before this Board is whether BLM's records indicated that the land was open to the location of mining claims on the days in October 1991 when the claims were located. See MM Holdings, Inc., 121 IBLA 26, 29-30 (1991). Appellant should note that even if the Government owns the mineral rights to the land, the notation rule precludes a mining claimant from locating a claim until the land office records are corrected. Id.; B. J. Toohey, 88 IBLA 66, 77-82, 92 I.D. 317, 324-26 (1985), and cases cited therein.

[1] Mining claims may be located only on lands open to the operation of the United States mining laws which is limited to "lands belonging to the United States." 30 U.S.C. § 22 (1988). Land which has been conveyed without a reservation of minerals to the United States is not available for the location of mining claims and a mining claim located on such land after it is conveyed is null and void ab initio. Estate of Steve Pederson, 118 IBLA 210, 211-12 (1991); Jack T. Kelly, 113 IBLA 280, 282 (1990). This is as true for railroad grants as for other conveyances, and BLM properly declared appellant's mining claims null and void ab initio because they lie entirely within the areas patented. Jack T. Kelly, *supra* at 282 n.1; see Gold-West Industries, Inc., *supra*; see Diane B. Katz, 48 IBLA 118 (1980).

We will briefly address a few of appellant's arguments that the mineral interests were reserved to the United States or that they were never properly conveyed. In support of her argument that the United States retains the mineral interest in the subject land, appellant refers to the Supreme Court's decision in United States v. Union Pacific Railroad Co., 353 U.S. 112 (1957), in which the Court held that the exclusion of mineral lands from land granted for construction of the main line of the railroad under section 2 of the Act of July 1, 1862, 12 Stat. 489, operated as a reservation of minerals beneath that right-of-way to the United States. The Court, however, recognized a different effect from the exclusion of mineral lands from the alternate sections granted under section 3 of that Act:

The system which Congress set up to effectuate its policy of reserving mineral resources in the alternate sections of public land granted by § 3 was by way of an administrative determination, prior to issuance of a patent, of the mineral or nonmineral character of the lands. Patents were not issued to land administratively determined to constitute mineral lands. And, the administrative determination was final. Burke v. Southern Pacific R. Co., 234 U.S. 669. Such an administrative system was obviously inappropriate to the right of way granted by § 2.

353 U.S. at 116. Because the land on which the subject claims are located was patented as an alternate section, the patent itself evidences the final administrative determination that the land was not mineral in character and no mineral rights were reserved. Such patents cannot now be attacked by persons who had no interest in the lands at the time the patents were issued. Joseph A. Barnes, 78 IBLA 46, 55-56, 90 I.D. 550, 555 (1983), affd, Barnes v. Hodel, 819 F.2d 250 (9th Cir. 1987), cert. denied, 484 U.S. 1005 (1988).

Appellant's argument that the patent should be nullified or corrected is unavailing not only because she had no interest in the land at the time of patent but also because the land would not be open to location of mining claims until after such action had been taken and noted on BLM's records. See MIM Holdings, Inc., supra. Thus, appellant's claims would still be null and void ab initio.

Even if appellant had an interest in the lands at the time of patent, she has failed to provide a sufficient basis for concluding that the land was improperly patented. Although appellant refers to survey notes by a cadastral engineer stating that the land was "suitable for mining purposes," this notation does not provide sufficient basis to support the conclusion that the lands were mineral in character when patented. "[I]t 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." Diamond Coal & Coke Co. v. United States, 233 U.S. 236, 239-40 (1914).

Appellant refers to patents issued under the various townsite laws, contending that the exception of mineral lands from those grants operated so that townsite patents did not preclude the location of mining claims after the patent was issued. In Norman R. Blake, 119 IBLA 141 (1991), we recognized this unusual characteristic of townsite patents which differ from other patents such as railroad patents or state grants where the mineral character of the land is determined at the time of conveyance. We recognized in Blake, however, that even under a townsite patent, only land covered by a valid mining claim at the time of conveyance was excluded and remained open to subsequent location if that claim were later abandoned, a conclusion we found to be supported by a case to which appellant refers, Davis's Administrator v. Weibbold, 139 U.S. 507, 518-19 (1891). Thus, even if railroad patents operated in the same manner as townsite patents, the land on which appellant's claims are located would not be available because there is no showing that the lands in question were the subject of valid mining claims at the time of patent.

Therefore, 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.

Will A. Irwin
Administrative Judge

I concur.

Bruce R. Harris
Deputy Chief Administrative Judge