

INTERIOR BOARD OF LAND APPEALS

Brooks Land & Cattle Company, LLC

171 IBLA 149 (March 15, 2007)

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BROOKS LAND & CATTLE COMPANY, LLC

IBLA 2006-140

Decided March 15, 2007

Appeal from a decision of the Oregon State Office, Bureau of Land Management, rejecting an application for a recordable disclaimer of interest. OR-62923.

Affirmed as modified.

1. Federal Land Policy and Management Act of 1976:
Disclaimers of Interest

Where the Secretary of the Interior determines that a record interest of the United States has terminated by operation of law or is otherwise invalid, section 315 of FLPMA, 43 U.S.C. § 1745 (2000), authorizes the Secretary of the Interior to issue a recordable disclaimer of interest in any lands where the disclaimer will help remove a cloud on the title of such lands. Where appellant filed an application for a recordable disclaimer of an interest in land it does not own and in which it has no interest, there can be no cloud on the applicant's title that could be disclaimed pursuant to section 315, and the application is properly denied.

APPEARANCES: Jeffrey M. Wilson, Esq., Prineville, Oregon, for appellant.

OPINION BY ADMINISTRATIVE JUDGE ROBERTS

Brooks Land & Cattle Company, LLC (Brooks), has appealed the February 16, 2006, decision of the Oregon State Office, Bureau of Land Management (BLM), rejecting its application for a recordable disclaimer of interest in real property situated in sec. 7, NE $\frac{1}{4}$ SE $\frac{1}{4}$, T. 17 S., R. 12 E., Willamette Meridian, Oregon. Upon good cause shown by Brooks, we have expedited this appeal.

On March 1, 2005, Brooks purchased the property for future residential development. Brooks states that

[t]he preliminary title report disclosed that a portion of the real property (approximately 40 acres) is subject to a recorded encumbrance, including a reservation in favor of the United States, providing that “if and when, the lands are required in whole or in part, for power development purposes, any structures or improvements placed thereon, which shall be found to obstruct or interfere with such development shall, without expense to the United States, * * * be removed or relocated insofar as is necessary to eliminate interference with power development.”

(Notice of Appeal (NOA) at 1, quoting Preliminary Title Report, Ex. 1 to Brooks’ Application for Issuance of a Document of Disclaimer (Application for Disclaimer).) Brooks states that a recordable disclaimer of interest of this reservation “is necessary to remove a cloud on its title that affects the viability of the parcel for future residential development.” (NOA at 1.)

In its decision, BLM states that Brooks “requests a recordable disclaimer of interest of the reservation incorporated in the United States conveyance document patent #36-70-0004 dated July 8, 1969,” issued to Deschutes County, Oregon. In reviewing Patent No. 36-70-0004 (Ex. H of Administrative Record (AR) at 1), we note that the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of sec. 7, but not the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of sec. 7, is listed among the tracts of public land subject to patent from the United States to Deschutes County, Oregon. That patent contains the reservation described by Brooks, which was based on temporary Power Site Reserve (PSR) No. 68, which withdrew and reserved all public land in sec. 7, NW $\frac{1}{4}$ SE $\frac{1}{4}$, T. 17 S., R. 12 E., Willamette Meridian, Oregon, for water power purposes. Temporary PSR No. 68 was made permanent by Executive Order dated July 2, 1910. On April 26, 1957, the lands were restored to disposition under applicable public land laws, but subject to section 24 of the Federal Power Act of June 20, 1920 (FPA), as amended, 16 U.S.C. § 818 (2000), which by its terms provided that the lands were “restored to disposition under applicable public land laws subject to the provisions of section 24 of the [FPA].” 22 FR 3231-32 (May 8, 1957). Thus, the inclusion of the reservation in Patent No. 36-70-0004, embracing the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of sec. 7, was based upon the April 26, 1957, restoration order. However, on October 8, 1981, BLM published an order announcing the revocation in part of the July 2, 1910, Executive Order, restoring 390.86 acres of lands that had been withdrawn pursuant to that Executive Order, including sec. 7, NW $\frac{1}{4}$ SE $\frac{1}{4}$, to operation of the public land laws generally, subject to valid existing rights. 46 FR 49873 (Ex. B of AR).

In its decision rejecting Brooks' application for a recordable disclaimer of interest, BLM stated:

Because the reservation was based on factual evidence at the time the patent was issued, it did not represent an erroneous inclusion. The Bureau of Land Management has no authority to remove the reservation and therefore rejects the application for recordable disclaimer of interest. Reference 43 CFR 1865.0-5(b). The request referencing the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of section 7 is not discussed in this decision as patent #689581 embracing the land did not contain a Section 24 reservation.

Subsequent studies of the affected lands reserved for potential power site development under PSR No. 68 found the lands unsuitable for power development. On October 1, 1981, with the concurrence of the Federal Energy Regulatory Commission, the Secretary of Interior revoked PSR No. 68 affecting the lands in section 7, reference Public Land Order No. 6029, 46 FR page 49873. The effective date of that action was November 6, 1981. [Emphasis added.]

The record includes a copy of Patent No. 689581 in Brooks' chain of title, which was a homestead entry dated June 23, 1919, for the E $\frac{1}{2}$ SE $\frac{1}{4}$ of sec. 7 and the S $\frac{1}{2}$ SW $\frac{1}{4}$ of sec. 8, T. 17 S., R. 12 E., Willamette Meridian, Oregon. See Ex. 5 to Application for Disclaimer (Ex. I of AR). The patent was not subject to a reservation of any kind. In short, appellant's land, the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of sec. 7, was not subject to a reservation and accordingly the 1981 restoration did not apply to that parcel. The Preliminary Title Report prepared by AmeriTitle upon which Brooks relies is not to the contrary. It indicates as Special Exception 9 that the section 24 reservation applicable to "any part or all of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of said section 7, T. 17 S., R. 12 E., W.M." (Ex. 1 to Ex. I of the AR at 2.) Clearly, Special Exception 9 does not refer to appellant's property.

[1] Section 315 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1745 (2000), authorizes the Secretary of the Interior to issue a recordable disclaimer of interest in any lands "where the disclaimer will help remove a cloud on the title of such lands and where he determines (1) a record interest of the United States in lands has terminated by operation of law or is otherwise invalid; * * *." Although, in accordance with the provisions of 43 U.S.C. § 1745(c) (2000) and 43 CFR 1864.0-2(b), a disclaimer has the same effect as a quitclaim deed, a disclaimer "does not grant, convey, transfer, remise, quitclaim, release or renounce any title or interest in lands * * *." 43 CFR 1864.0-2(b); see 68 FR 494 (Jan. 6, 2003); James D. and Joyce J. Brunk, 158 IBLA 284, 290-91 (2003).

What is not apparent from the record is why AmeriTitle, in insuring title to Brooks' NE $\frac{1}{4}$ SE $\frac{1}{4}$ of sec. 7, included the reservation affecting the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of sec. 7 as a "special exception" at all and, having done so, why it failed to recognize the 1981 restoration of that land to the operation of the public land laws. In any event, an applicant must have title or an interest in the land to assert a cloud on that title that could be disclaimed pursuant to section 315 of FLPMA. To the extent Brooks means to suggest that the mere possibility that the United States could exercise its rights under the purported FPA reservation for the adjoining quarter section constitutes a cloud on its title to, or its development plans for, the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of sec. 7, we note only that such concerns are clearly without merit. The reservation was contained in a patent that did not embrace appellant's land; the legal predicate for that reservation was revoked in 1981; and in the absence of title or an interest in the land for which the disclaimer is sought, no cognizable claim can arise under section 315. BLM's decision is modified accordingly. Because there is no evidence in the present record that Brooks' title was ever subject to the FPA reservation, BLM properly rejected the application. James D. and Joyce J. Brunk, 158 IBLA at 291.

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 as modified.

James F. Roberts
Administrative Judge

I concur:

T. Britt Price
Administrative Judge