

MINUTE ITEM

7/26/73
PJF

15. REQUEST FOR ISSUANCE OF CORRECTORY PATENTS, DR. ANGUS A. McKINNON (PRESENT CLAIMANT); THEODORE EISFELDT, JOHN S. LARUE AND GEORGE W. KIMBLE (ORIGINAL PATENTEES); SCHOOL LAND IN EL DORADO COUNTY - SA 1007, SA 1740, SA 1778, SA 1825, SA 1890.

After consideration of Calendar Item 14 attached, and upon motion duly made and carried, the following resolution was adopted:

THE COMMISSION AUTHORIZES THE ISSUANCE OF CORRECTORY PATENTS COVERING THE W $\frac{1}{2}$ OF THE NE $\frac{1}{4}$; LOT 5; LOT 2; THE E $\frac{1}{2}$ OF THE NW $\frac{1}{4}$; LOTS 9 AND 10; AND LOTS 1, 3 AND 7 OF SECTION 36, T 11 N, R 10 E, MDM, EL DORADO COUNTY, IN THE NAME OF THE ORIGINAL APPLICANTS, THEODORE EISFELDT, JOHN S. LARUE AND GEORGE W. KIMBLE, RESERVING ALL MINERALS TO THE STATE AS REQUIRED BY THE ACT OF CONGRESS APPROVED JANUARY 25, 1927 (44 STAT 1026).

Attachment:

Calendar Item 14 (3 pages)

CALENDAR ITEM

14.

REQUEST FOR ISSUANCE OF CORRECTORY PATENTS

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SA 1007

SA 1740

SA 1778

SA 1825

SA 1890

In May of 1971, application was made to the Division for correctory patents to be issued to the present claimant as successor in interest to the original patentees of the 412.75 acres within Section 36, T 11 N, R 10 E.

The facts show that the State may not have acquired title to the subject land when it issued patents thereon, and that Section 36, or portions thereof determined to be mineral, did not pass to the State until the effective date of the Act of Congress approved January 25, 1927, which provided for the conveyance to the State of school lands mineral in character. The facts further indicate that the present claimant has successfully perfected his title to the major federal mining claims on the subject lands, and that the issuance of these patents will serve to clarify and stabilize the uncertain title problems involving Section 36.

The original State patents for these lands did not contain reservation of minerals as required by the 1927 Act, thereby giving rise to the question as to the validity of the original patent, and as to whether or not a new patent could be issued as of current date, reserving minerals in compliance with the 1927 Act.

The following patents were issued by the State Surveyor General, predecessor of the State Lands Commission:

Application Date	Location Number	Applicant	Description	Patentee	Patent Date
5/08/1875	SA 1007	Theodore Eisfeldt	Lot 4 or W½ of NE¼, Sec 36, T 11 N, R 10 E, MDM, as shown on Plat approved 7/10/1872	Theodore Eisfeldt	9/21/1876
6/06/1887	SA 1740	John S. LaRue	Lot 5 of Sec 36, T 11 N, R 10 E, MDM, as shown on Plat approved 7/10/1872	John S. LaRue	9/13/1888
9/22/1887	SA 1778	John S. LaRue	Lot 2 of Sec 36, T 11 N, R 10 E, MDM, as shown on Plat approved 7/10/1872	John S. LaRue	12/29/1888

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Application Date	Location Number	Applicant	Description	Patentee	Patent Date
2/02/1888	SA 1825	George W. Kimble	E½ of NW¼, and Lots 9 & 10 of Sec 36, T 11 N, R 10 E, MDM, as shown on Plat approved 9/12/1879	George W. Kimble	5/09/1889
5/26/1888	SA 1890	John S. LaRue	Lots 1, 3 & 7 of Sec 36, T 11 N, R 10 E, MDM, as shown on Plat approved 9/12/1879	John S. LaRue	3/17/1891

At the time of the filing of these applications, as well as on the date of issuance of these patents, the State's title to these lands was questionable. Pursuant to the provisions of the School Land Grant (Act of March 3, 1853, 10 Stat. 244), title to Sections 16 and 36 did not vest in the State if segregated as mineral land on the U.S. plat of survey. The original U.S. plat approved on July 10, 1872, did not segregate the subject Section 36 as mineral land. However, supplemental plats filed in 1873, 1879, 1887 and 1914, indicated numerous United States mineral patents and surveys located within the section.

Many of these mining claims embrace lands included in the above-listed State patents. Furthermore, at an 1896 hearing in the Sacramento district of the United States General Land Office, the Land Office Commissioner made a determination that the non-mineral classification of Section 36, as shown by the 1872 plat, had been overcome by sufficient evidence and that Section 36 was and had been known to be mineral land prior to 1872. Thus, the State Surveyor General, at least prior to 1900, took the position that Section 36 was non-mineral, and had vested in the State upon the filing of the 1872 plat. Federal land officials, however, have consistently maintained that said section was mineral in character, and thus title did not pass to the State.

By Act of Congress approved January 25, 1927, as amended (43 U.S.C.A. 870-873), the several grants to the states of numbered school sections were extended to embrace numbered-school-sections-mineral-in-character with certain exceptions. This grant was "upon the express condition that all sales, grants, deeds, or patents for any of the lands so granted shall hereafter be subject to and contain a reservation to the State of all . . . mineral in the lands so sold, granted, deeded, or patented," and that the mineral deposits in such lands "not heretofore disposed of by the State shall be subject to lease by the State as the State Legislature may direct," the proceeds of such leases to be utilized for the common or public schools. The statute contains a further provision: "That any lands or minerals hereafter disposed

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of contrary to the provisions of this section shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General of the United States."

In a case very similar to the present one, which arose in 1963, the Attorney General's office issued a letter opinion dated January 14, 1963 (a copy of which is on file in the office of the State Lands Commission). The opinion indicated that under these circumstances, it would be proper to issue a correctory State patent to the original applicants without further consideration, upon the filing of a formal application by the successor in interest to the original applicant, accompanied by suitable evidence as to the right of the applicant to receive a patent and the required statutory filing and patent fees. Any patents so issued would be required, pursuant to the provisions of the January 25, 1927 Act of Congress, to contain a reservation of all minerals in favor of the State. An appropriate application for the issuance of a supplemental patent, together with the required fees and the preliminary report of title, has been submitted by the present owner. It is the staff's opinion that the applicant is entitled to a correctory patent.

EXHIBITS: A. Site Map.
 B. AG Letter Opinion dated 1/14/63

IT IS RECOMMENDED THAT THE COMMISSION AUTHORIZE THE ISSUANCE OF CORRECTORY PATENTS COVERING THE W $\frac{1}{2}$ OF THE NE $\frac{1}{4}$; LOT 5; LOT 2; THE E $\frac{1}{2}$ OF THE NW $\frac{1}{4}$; LOTS 9 AND 10; AND LOTS 1, 3 AND 7 OF SECTION 36, T 11 N, R 10 E, MDM, EL DORADO COUNTY, IN THE NAME OF THE ORIGINAL APPLICANTS, THEODORE ELSFELDT, JOHN S. LARUE AND GEORGE W. KIMBLE, RESERVING ALL MINERALS TO THE STATE AS REQUIRED BY THE ACT OF CONGRESS APPROVED JANUARY 25, 1927 (44 STATS 1026).