

INTERIOR BOARD OF LAND APPEALS

Alfred Jay Schritter

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ALFRED JAY SCHRITTER

IBLA 2006-134

Decided February 21, 2007

Appeal from a decision of the Kingman (Arizona) Field Office, Bureau of Land Management, asserting Federal ownership of sand, gravel and ballast, and common earthen material, and notifying the appellant of unauthorized use of public land. AZA-33377.

Affirmed.

1. Trespass: Generally--Administrative Procedure: Burden of Proof

An appellant bears the burden of showing error in a BLM decision requiring cessation of operations that would remove mineral materials owned by the United States from the public lands.

2. Acquired Lands--Conveyances: Reservations--Patents of Public Land: Effect--Railroad Grant Lands--State Laws

A railroad patent passes fee simple title to public land from the United States to the grantee. After a patent has issued, questions of property rights are governed by State law. Where public land in Arizona was patented to the Santa Fe and Pacific Railroad Company and later conveyed subject to both a general mineral reservation and a reservation of "gravel and ballast" for "railroad purposes," under State law, sand, gravel, and ballast are excluded from the general mineral reservation in the deed.

3. Acquired Lands--Conveyances: Reservations--State Laws--  
Trespass: Generally

Where the record fails to support a finding that BLM erred in determining (1) that the owner of a mineral estate on lands acquired by the United States was removing sand, gravel, and common earthen material, and (2) that such material was not reserved under the general mineral clause of the relevant deed, Arizona law dictates a finding that the material removed was not included in appellant's mineral estate, but rather was included in the surface estate held by the United States.

APPEARANCES: Jeffrey A. Goldberg, Esq., and Lisa S. Bruno, Esq., Kingman, Arizona, for the appellant; Barbara B. Fugate, Esq., and Kendra Nitta, Esq., Washington, D.C., for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE KALAVRITINOS

Alfred Jay Schritter has appealed from a December 21, 2005, decision issued by the Field Manager, Kingman, Arizona, Field Office, Bureau of Land Management (BLM), notifying him that his removal of sand, gravel, rock, crushed stone, soil, clay and "other earthen materials commonly used as construction fill," from land owned by the United States in Mohave County, Arizona, constitutes an unauthorized use of the public lands pursuant to 43 CFR 2920.1-2.<sup>1/</sup> Schritter owns the underlying mineral estate.

Schritter concedes that sand and gravel are not part of the mineral estate, but claims that he may appropriate material from the surface in order to remove "decorative rock," which, he argues, is part of his mineral estate under controlling State law. BLM does not dispute Schritter's "potential right" to remove decorative rock, but argues that the record establishes that between June 2004 and December 2004 Schritter removed sand, gravel, and like materials; thus, BLM argues that decorative rock is not at issue and the mineral reservation in the relevant deed is not applicable. We uphold BLM's decision because, on appeal, Schritter failed to demonstrate that BLM erred in determining that the material he removed during the

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<sup>1/</sup> That regulation provides in pertinent part that "[a]ny use, occupancy, or development of the public lands other than casual use \* \* \* without authorization under the procedures in § 2920.1-1 of this title shall be considered a trespass. Anyone determined \* \* \* to be in trespass \* \* \* shall be notified of such \* \* \*."

time period in question is sand, gravel and ballast, reserved in the applicable deed only under the “railroad reservation,” and, under Arizona State law, the United States, as the surface estate owner, owns the sand, gravel, and ballast.

The land at issue is located in the SW<sup>1</sup>/<sub>4</sub> sec. 35, T. 21 N., R. 16 W., Gila & Salt River Meridian, south of Hualapai Mountain Road.<sup>2/</sup> In 1923, land in section 35 was patented by the United States to the Santa Fe Pacific Railroad Company (Santa Fe) pursuant to the Act of July 27, 1866, 14 Stat. 292.<sup>3/</sup> Santa Fe conveyed the land in section 35 to George Getz in 1950, reserving a general mineral interest, as well as the right to take sand, gravel and ballast from the surface “for railroad purposes” (the “railroad reservation”). (Binder, Ex. A (Getz deed).) The United States acquired the surface rights to section 35, among other lands, from Globe Corporation (formerly George Getz Corporation), by warranty deed recorded in Mohave County in 1988,<sup>4/</sup> as part of a land exchange.<sup>5/</sup> (Binder, Exs. D and E.) Schritter acquired “all Santa Fe’s right, title and interest, if any” in the SW<sup>1</sup>/<sub>4</sub> section

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<sup>2/</sup> Schritter’s deeds describe the land as “[t]hat portion of Section 35 lying south of the south right of way line of the Hualapai Mountain Road right of way as recorded in Book 1439, Official Records, Page 29, of Mohave County, Arizona, containing 74.88 acres, more or less.” (BLM Binder included with the official case file and entitled “Request for Legal Opinion” (Binder) at Ex. A to Ex. I, and Ex. J.)

<sup>3/</sup> That Act made alternate sections of nonmineral public land, designated by odd numbers, on either side of the railroadline available for patent to the Atlantic & Pacific Railroad Company, and its successors and assigns, to encourage construction of the railroad. See, e.g., Burke v. Southern Pacific Railroad Company, 234 U.S. 669, 680-81 (1914).

<sup>4/</sup> The Warranty Deed by which the United States acquired lands in Mohave County as part of a June 17, 1988, land exchange is recorded in the Official County Records beginning at Book 1439, Page 55; sec. 35, T. 21 N., R. 16 W., is listed on Page 63. See Binder, Ex. E.

<sup>5/</sup> The land exchange was accomplished pursuant to section 206 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1716 (2000). Section 206(a) of FLPMA, 43 U.S.C. § 1716(a) (2000), provides that public land or interests therein may be disposed of by exchange by the Secretary when the Secretary determines “that the public interest will be well served by making that exchange.” Section 206(b), 43 U.S.C. § 1716(b) (2000), provides that the Secretary may accept title to “any non-Federal land or interest therein in exchange” for land he “finds proper for transfer out of Federal ownership \* \* \*,” so long as both parcels are located in the same State.

35 from Santa Fe by quitclaim deed recorded in Mohave County on March 30, 2004. (Binder, Ex. J.) About 6 months earlier, on October 22, 2003, Santa Fe had conveyed to Schritter by quitclaim deed its “right, title and interest, if any, in and to decorative rock, sand, and gravel” in the SW¼ of section 35. (Binder, Ex. I.)

On December 31, 2003, the Acting Field Manager of the Kingman Field Office issued a letter to Schritter purporting to recognize Schritter’s “right to exploit decorative stone, sand and gravel, and to use the surface of said land for purposes incidental to mining.” (Letter from Gail Acheson, Acting Field Manager dated Dec. 31, 2003.) Schritter began mining sometime between February 9 and May 4, 2004. See Answer, Attachment A, “Declaration of Paul L. Misiaszek” (Misiaszek Declaration) at 3, ¶ 7. In early June 2004, BLM began investigating the activity on the site. Not long thereafter, several local citizens lodged complaints with the Arizona State Office, BLM, alleging that Schritter was removing “dirt and gravel” for development purposes from a “gravel pit” on the land, and claiming that, under Arizona law, BLM owns rights to the sand, “dirt and gravel.” E.g., Letter from Ray and Darlean Anderson dated July 13, 2004; see also Binder, Ex. M. In July 2004, BLM notified Schritter that if he was mining “common borrow” <sup>6/</sup> for use as construction fill, that material might not be part of his mineral estate. The record reflects that BLM determined, based upon various challenges to Schritter’s operations, to reconsider its 2003 position regarding the rights to mine sand and gravel or decorative stone, and so advised Schritter of this examination. BLM informed Schritter that BLM had requested a legal opinion concerning the split estate issue and, in particular, which reservation – the general mineral interest reservation or the railroad reservation – governed the right to remove sand and gravel. (July 23, 2004, Letter from Acting Field Manager, Kingman Field Office, BLM, to Schritter; see Memorandum dated Sept. 9, 2004, from State Director to Office of the Solicitor, Phoenix Field Office (BLM Request Memo).) <sup>7/</sup>

<sup>6/</sup> The mining term “borrow,” or “borrow pit,” is applied to “material taken from [a] pit near an embankment when there is insufficient excavation nearby on the job to form the embankment.” A Dictionary of Mining, Mineral, and Related Terms, U.S. Department of the Interior, Bureau of Mines, 1968, at 127.

<sup>7/</sup> In its request for a legal opinion, BLM states that “[t]he deeds in question were used by Santa Fe to convey the surface estate for literally thousands of acres across northern Arizona (and presumably adjoining states). Through the many land exchanges that have occurred under FLPMA since 1976, BLM Arizona now holds the surface estate to many of these former Santa Fe lands which continue to be burdened by the reservation language in question.” (BLM Request Memo at 1.)

By decision dated December 21, 2005, BLM concluded that, under Arizona case law interpreting language virtually identical to that in Santa Fe's deed to Getz, sand, gravel, ballast and other earthen materials were not reserved as part of Santa Fe's general mineral reservation, but "fall[] within the scope of 'gravel and ballast' addressed in the deed under the 'railroad reservation.'" (Decision at 2.) BLM determined that, under the decision of the Arizona Court of Appeals in Spurlock v. Santa Fe Pacific Railroad Company, 694 P.2d 299 (1984), cert. denied, 472 U.S. 1032 (1985), "the general mineral reservation is not applicable to these materials, and because you have made no claim that rights for the grantor under the 'railroad reservation' would apply to you in these circumstances, we have concluded that such materials belong to the United States."<sup>8/</sup> Id. Accordingly, BLM ordered Schritter to "immediately cease all operations" in the SW $\frac{1}{4}$  of section 35 that would remove "sand, gravel, rock and crushed stone, as well as soil, clay and other earthen materials commonly used as construction fill, that can be classified as 'gravel and ballast,'" stating that, in the future, BLM "will consider removal of such materials \* \* \* to be willful trespass."<sup>9/</sup> Id. at 1-2.

The record upon which the Field Manager based his conclusions that the materials at issue are not decorative rock, but rather, fall within the scope of gravel and ballast addressed in the "railroad reservation" of the Getz deed includes observations of BLM Geologists Paul Misiaszek and Paul Buff documented after several visits to the location beginning in June 2004, summarized as follows: Photographs of the face of the pit and the surrounding landscape depict an area denuded of vegetation and showing an "active face," which can be seen from the Hualapai Mountain Road. (Photographs 1 and 2, taken by Misiaszek on June 25, 2004.) Photographs taken from the haul road show a dry, sandy ground layer mixed with gravel and strewn with scattered larger rocks of varying sizes. (Photographs 3 and 4, taken by Misiaszek on June 25, 2004.)

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<sup>8/</sup> BLM states that it issued its decision in accordance with advice of counsel. (Decision at 1; see Memorandum dated Dec. 14, 2005, from Assistant Solicitor, Branch of Onshore Minerals, Division of Mineral Resources, Office of the Solicitor, to State Director, BLM, Arizona State Office (Dec. 14, 2005, Sol. Memo).)

<sup>9/</sup> BLM regulations make it a trespass to remove mineral materials from public lands without authority of law or contract. 43 CFR 9239.0-7. That regulation provides, in pertinent part: "The extraction, severance, injury, or removal of \* \* \* mineral materials from public lands under the jurisdiction of the Department of the Interior, except when authorized by law and the regulations of the Department, is an act of trespass. Trespassers will be liable in damages to the United States \* \* \*."

On June 7, 2004, Misiaszek observed that approximately 4 acres had been “cleared of brush and stripped of topsoil,” and that, within this area, “no more than 2 acres” had been excavated. (Misiaszek Declaration at 5, ¶ 10.) Topsoil had been placed in berms “on the northern perimeter of the disturbed area.” *Id.* Misiaszek observed a “grizzly” on site with which cobbles greater than 6 inches in diameter had been separated from the gravel. (June 7, 2004, Memorandum of Paul Misiaszek to Richard Greenfield and others.) On that visit, Misiaszek determined that the grizzly had been used to separate clay, silt, sand and gravel, and smaller pebbles from larger pebbles, cobbles, and boulders. (Misiaszek Declaration at 5, ¶ 10.) The gravel had been placed in stockpiles having “grain-sizes ranging from clay, silt and sand up to pebbles with a maximum diameter of one and one-half inches.” *Id.* The material that did not pass through the grizzly had been placed in “piles on the southwestern margin of the disturbed area.” *Id.*

Misiaszek returned to the site on July 27, 2004, when he observed an operator dumping material through a metal screen. (Misiaszek Memorandum dated July 27, 2004.)

On August 30 and 31, 2004, Misiaszek and Buff again examined Schritter’s mining operation. (Misiaszek Declaration at 6, ¶ 12.) Buff observed that “an unconsolidated alluvial sand and gravel deposit” had been mined from “the nose of a ridge.” (Answer, Ex. B (Buff Declaration) at ¶ 8.) They observed a grizzly on site with “a simple, stationary gravel screen, of which the upper half was made of one and one-half inch mesh, and the lower half was made of one inch mesh.” (Misiaszek Declaration at 6, ¶ 12.)

Misiaszek and Buff calculated that “approximately 2,900 cubic yards of gravel had been removed from the site to date.” (Misiaszek Declaration at 6, ¶ 12.) In a September 7, 2004, telephone conversation, Schritter told Misiaszek that “some of the gravel was delivered to property located in Lazy Y-U Estates,” and was “primarily used for road construction and home-site landscaping.” *Id.* at ¶ 13.

Misiaszek made two additional trips to the location on October 19 and December 6, 2004, finding circumstances unchanged. (Misiaszek Declaration at 6-7, ¶¶ 14, 16.)

As described above, in its 2005 decision, BLM ordered Schritter to cease “all operations that would remove ‘gravel and ballast.’” (Decision at 1-2.) Schritter timely appealed, and on October 30, 2006, filed a request for expedited consideration with this Board. On November 27, 2006, the Board received from BLM a “Motion to Strike Argument for Appellant’s Request for Expedited Consideration.” For cause

shown, we deny the motion to strike and expedite consideration of the merits of this appeal.

[1] An appellant bears the burden of showing error in a BLM decision requiring cessation of operations that would remove mineral materials owned by the United States from the public lands. MSVR Equipment Rentals, Ltd., 160 IBLA 95, 98 (2003); M. L. Petersen, 151 IBLA 379, 392 (2000). Conclusory allegations of error or differences of opinion, standing alone, do not suffice. Richard C. Nielsen (d/b/a Nielsen Sand and Rock), 129 IBLA 316, 325 (1994).

[2] The question of unauthorized use of the public lands arises here under circumstances different from those of the typical materials trespass, as this appeal involves patented lands acquired by the United States subject to a mineral reservation held by Schritter. We begin our analysis by considering the relevant law that controls our construction of the Santa Fe deeds in the State of Arizona, and how that law developed.

A railroad patent passes fee simple title to public land from the United States to the grantee. James A. Simpson, 136 IBLA 77, 79 (1996). Accordingly, Santa Fe received fee simple title to section 35, and that title included subsequently discovered minerals. Id., citing Burke v. Southern Pacific R.R. Co., 234 U.S. 669 (1914); Diamond Coal & Coke Co. v. United States, 233 U.S. 236, 239-40 (1914). The patent to Santa Fe contained no reservations. Santa Fe retained two interests when it conveyed title to Getz. As successor to Getz, the United States could acquire no more than that which Getz acquired; likewise, Schritter could acquire no more than what Santa Fe retained. To determine what Santa Fe retained, it is necessary to look at the language in the deed from Santa Fe to Getz. That deed contains a general mineral reservation of “all oil, gas, coal, and minerals whatsoever,” and a second reservation of “gravel and ballast” to be appropriated “for railroad purposes.”

The legal interpretation of a document conveying the surface and retaining the mineral estate is governed by the laws of the state in which the land is situated. James A. Simpson, 136 IBLA at 79, citing Oregon ex rel. State Land Board v. Corvallis Sand & Gravel Co., 429 U.S. 363, 372 (1977). In Spurlock v. Santa Fe Pacific Railroad Company, 694 P.2d 299, the Arizona Court of Appeals interpreted a deed from Santa Fe that contained a mineral reservation identical to that in the Getz deed, and incorporated a separate clause, like that in the Getz deed, that reserved “gravel, and ballast” for “railroad purposes.” In Spurlock, the Court held that the general

mineral reservation did not include the right to remove sand, gravel, and ballast<sup>10/</sup> where that right was reserved separately in the railroad clause. *Id.* at 311. Thus, under Arizona law interpreting deed language indistinguishable from that of record here, the right to remove sand, gravel, and ballast was retained in the railroad clause. Moreover, the Court noted that the retention of that right was only for railroad purposes and that Santa Fe had subsequently abandoned the right. Thus, because the general mineral reservation did not include the right to remove sand, gravel, and ballast, and that latter right had been abandoned by Santa Fe, it remained with the surface estate. *Id.*; see also State of Arizona v. Carley, No. 1 CA-CV 03-0792, Memorandum Decision (Ariz. Ct. App. Oct. 19, 2004) (Mem. Dec.) at 16, ¶ 26.

[3] Schritter does not challenge BLM's decision to the extent that it excludes "sand and gravel." Thus, accepting that the Spurlock decision compels that all Schritter could have received is the general mineral reservation, Schritter implicitly acknowledges that the railroad reservation was abandoned by Santa Fe and did not pass to him. Instead, Schritter asserts that he is mining only "decorative rock" by surface methods, and that this right comes within the general mineral reservation. As support, he cites the Court's reasoning in the Memorandum Decision in State of Arizona v. Carley, *supra*. (SOR at 1-2; Reply to Answer at 1-2; Request for Expedited Consideration at 1-3.) In Carley, the Arizona Court of Appeals interpreted language in a deed like the one in Spurlock, and distinguished "decorative rock" from "sand, gravel, and ballast," holding that decorative rock falls within the general mineral reservation. State of Arizona v. Carley, *supra*, Mem. Dec. at 16, ¶¶ 27-30. BLM's decision acknowledged that the decision in Carley, while not precedential,<sup>11/</sup>

<sup>10/</sup> In its Dec. 14, 2005, legal opinion, the Solicitor's Office notes that "the Spurlock court categorizes 'sand and gravel' under the reservation in the deeds that makes specific mention of 'gravel and ballast.' The court did not comment on its interchangeable use of the terms. We adopt this understanding that 'gravel and ballast' includes 'sand and gravel,' which more often than not naturally occur together in the same deposits. See, e.g., W.C. Krumbein & L. L. Sloss, *Stratigraphy and Sedimentation* 158-62 (2d. Ed. 1963)." (Dec. 14, 2005, Sol. Memo at 7 n.9) The Solicitor's Office went on say that "[i]n the case of sand possessing special properties, however, we believe it is reasonable to assume that the Arizona courts would find it does not fall under the second reservation, but under the general mineral reservation, even though common sand is categorized as 'gravel and ballast' under Spurlock," but added that "BLM would make the determination, in the first instance, as to the character of the sand." *Id.*

<sup>11/</sup> The Memorandum Decision in State of Arizona v. Carley, *supra*, was not published.  
(continued...)

portends a likelihood “that the Arizona courts will consider material that can be characterized as decorative rock to fall under the general mineral reservation.” (Decision at 2.) BLM, however, concluded and we agree that the record indicates that the materials Schritter removed during the time period in question are “within the scope of ‘gravel and ballast’ addressed in the deed under the ‘railroad reservation,’” and therefore do not fall within the general mineral reservation. Id.

As the facts make clear, BLM’s evidence, in the form of the Misiaszek and Buff declarations, shows that BLM examiners witnessed gravel being mined and removed from the site. Moreover, Schritter’s statement to Misiaszek that he sold the material to the Lazy Y-U Estates for roads and landscaping confirms these observations and directly contradicts Schritter’s suggestion, on appeal, that the material is not suitable for road use. Thus, we find no error in BLM’s factual determinations, verified in site examinations, that the material removed fell within the railroad reservation.

Schritter does not refute the fact that he sold the material for road use and landscaping. Instead, he presents the opinion of an expert he hired to examine the material on site, suggesting that the material might have other uses. Schritter’s expert stated in his report that he removed two samples of material from the Schritter mine site, the first from “an on-site stockpile of screened material,” and the second from the bank. (Morphew Report at 1.) The first sample “consisted of aggregates approximately 1-4 [inches] in size.” Id. The second was “an unprocessed native material consisting of soil and aggregates.” Id. The samples were analyzed by Geo Tek, Inc., of Las Vegas, for hardness. Id. The sample of aggregates did not meet the hardness standard for use in base materials “(MAG 702).” Id. The sample of unprocessed native material met the “gradation requirements of MAG 702 (base material),” but did not qualify for use in concrete or asphalt materials. Id. Morphew concluded that “the materials sampled” from the site “can not be used as a[n] \* \* \* approved material for road base, asphalt, or concrete mixtures; it could, however, “be used for \* \* \* landscape material or for decorative purposes.” Id. Morphew’s report thus contradicts a statement made to Misiaszek by a grizzly operator at the site in late July 2004, who told Misiaszek he was “making AB gravel.” (July 27, 2004, Memorandum by Misiaszek.)

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<sup>11/</sup> (...continued)

and has no clear precedential value. See Arizona Rule 28 of Civil Appellate Procedure. It is nonetheless a reasonable indicator of the State Court’s thinking, and, as the appellant relies on it in its SOR, we examine it here.

While Morphew indicated that the material did not meet the MAG requirements for use in road base material, Morphew did not acknowledge that Schritter had sold the material for road use or otherwise discuss the actual operation. Thus, Morphew's expert opinion is not relevant to the topic addressed by BLM's decision. Schritter's evidence focuses on hypothetical uses of material on the land subject to the mineral reservation. It neither denies the existence of nor otherwise responds to BLM's order to Schritter to cease the removal of "sand, gravel, rock and crushed stone, as well as soil, clay and other earthen materials commonly used as construction fill, that can be classified as 'gravel and ballast.'" (Decision at 1, 2.)

To the extent Schritter's position is that Morphew's report is evidence that he could produce decorative rock, we do not find that the report is probative. Morphew provided no expert opinion on the topic. Rather, his report states that the rock he studied at the site qualifies for landscape fill.<sup>12/</sup> Moreover, the very material (screened to remove larger pebbles, cobbles, and boulders), that Schritter already removed from the site for use in road work and landscaping is, according to Misiaszek and Buff, bank material – the same material that Morphew's report concludes qualifies only for landscape fill and not road material. Schritter has not demonstrated that BLM's conclusions regarding his production and sale of the material covered by the railroad reservation were in error.

We cannot find that the facts, the photographs, the observations of experts, and appellant's own statements support appellant's claim that the previously removed material is covered by the general mineral reservation.

At best, for Schritter, Morphew's evidence constitutes his opinion that the material "could be landscape material." Schritter argues that "landscape material," in all cases, constitutes decorative stone, and that any material that could be used for landscape purposes cannot, by definition, be sand, gravel and ballast, as categorized by BLM. We reject those propositions. We also reject the suggestion that the fact, as averred by Schritter, that material could be used for a given purpose, gives permission to Schritter to mine or sell sand, gravel, and ballast under the general mineral reservation of the deed. It was incumbent upon Schritter to show that the material he removed and sold was not sand, gravel and ballast. He has failed to submit the necessary evidence.

Moreover, Carley does not compel a different conclusion. Schritter is correct to note that the Carley court suggested that decorative rock would come within the

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<sup>12/</sup> Schritter did not define what he meant by this or otherwise convey a logical nexus between landscape material in general and "decorative rock."

general mineral reservation. As stated, this case is not precedential and therefore we cannot ascertain whether this conclusion will ultimately stand as State law within Arizona. Nevertheless, we have accepted its premise for purposes of deciding this appeal. Nothing in Carley, however, purported to define “decorative” rock in all cases. To the contrary, the court in that case relied on the parties’ stipulation that the andesite, rhyolite, and altered tuff there at issue are “mineral deposits, distinct from the soil, and commercially valuable as decorative rock,” in concluding that, “based on Spurlock, a general mineral reservation like the one here grants ownership of such substances to the party holding the mineral reservation.” State of Arizona v. Carley, Mem. Dec. at 18, ¶ 30. There is no such stipulation here. Moreover, neither Carley nor the parties in that case accepted the premise, upon which Schritter’s arguments here necessarily depend, that, if a mineral material is used for landscaping, it equates in all cases to “decorative” rock. We reject any such syllogism here. The record in the case at hand does not show that, during the time period in question, Schritter was engaged in removing decorative rock.

The record supports a conclusion that Schritter removed mineral material from the SW $\frac{1}{4}$  of section 35 between June and December 2004 that was subject to the railroad reservation and, therefore, that was part of the surface estate owned by the United States. Schritter had an opportunity to provide probative evidence that the material he removed and sold from section 35 was “decorative rock.” Considering the record as a whole, we find that Schritter did not meet the burden of establishing error in BLM’s decision which found that the material he removed is sand, gravel, or other material that is governed by the “railroad reservation,” rather than the “mineral reservation,” in the deed from Santa Fe to George Getz and, therefore, that the United States, as the current surface estate owner, owns the sand, gravel, and ballast located on the lands subject to the Getz deed. In doing so, we distinguish this case from split estate situations involving the interpretation of mineral reservations under Federal statutes. See BedRoc Ltd., LLC v. United States, 541 U.S. 176 (2004); Watt v. Western Nuclear, 462 U.S. 36 (1983).

All other arguments advanced but not specifically addressed herein have been considered and rejected.<sup>13/</sup>

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<sup>13/</sup> Questions arising out of Schritter’s Notice to Begin Decorative Rock Extraction, received by the Board on Dec. 21, 2006, are beyond the scope of this appeal.

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.

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Christina S. Kalavritinos  
Administrative Judge

I concur:

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Lisa Hemmer  
Administrative Judge