**American Jurisprudence\_Public Lands\_Patents\_Contracts**

**§ 116 --As within constitutional protection**

 **[63A Am Jur 2d PUBLIC LANDS]**

Generally, a land grant is a contract, within the protection of the Federal Constitution, 58 and, provided that all the conditions of such a grant are complied with, 59 it is protected by the Constitution the same as a contract between private parties. 60 Under the impairment clause, a land grant may not be rescinded by a subsequent act of the state legislature. 61

Footnote 58. *Appleby v New York, 271 US 364, 70 L Ed 992, 46 S Ct 569; Franklin County Grammar School v Bailey, 62 Vt 467, 20 A 820; Lassly v Fontaine, 14 Va 146*.

Footnote 59. Compliance with the provisions of a state statute governing the sale of tidelands of the state by making an application for their purchase, taking the required oath, and expending money for a survey, cannot be said to consummate, without the payment of some installment of the purchase price, a binding contract between the purchaser and the state protected against impairment by subsequent legislation. *Banning Co. v California, 240 US 142, 60 L Ed 569, 36 S Ct 338.*

Footnote 60. *Columbia R., Gas & Electric Co. v South Carolina, 261 US 236, 67 L Ed 629, 43 S Ct 306; Winter v Jones, 10 Ga 190*.

Footnote 61. *McGee v Mathis, 71 US 143, 18 L Ed 314; Fletcher v Peck, 10 US 87, 3 L Ed 162.*

A grant of rights in public property accepted by the beneficiary amounts to a contract entitled to protection against impairment by action of the state, or by municipalities acting under state authority. *Blair v Chicago, 201 US 400, 50 L Ed 801, 26 S Ct 427.*

**PUBLIC LANDS**

**IV. LAND DEPARTMENT [39-47]**

**§ 39 Generally [63A Am Jur 2d PUBLIC LANDS]**

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The land department of the United States, a commonly accepted term for the federal land authorities, consists of the Secretary of the Interior, 72 the Bureau of Land Management, 73 and their subordinate officers. 74 This department is a special tribunal, 75 and is vested by statute with substantially exclusive jurisdiction to determine, in the first instance, all questions of fact respecting the disposition, acquisition, and control of the public lands, so long as the legal title thereto remains in the United States; 76 and while such matters are pending in the department, the courts are without jurisdiction thereof, in the absence of statute specifically conferring it. 77 It has the duty to consider and pass on the qualifications of the applicant, the acts he has performed to secure the title, the nature of the land, whether it is of the class which is open to sale, 78 its location, surveys thereof, 79 the facts as to settlement, residence, and cultivation by entrymen, 80 and the sufficiency of their proof of settlement and improvement. 81 The power of the land department to inquire into the extent and validity of rights claimed against the government does not cease until the legal title has passed from the government; 82 and its decisions once reached on matters within the scope of its authority are unassailable except by direct attack. 83 Jurisdiction of the land department terminates upon the issuance of a patent, 84 or by the performance by the Secretary of the Interior of acts that are equivalent to a patent, 85 and thereafter controversies relating to the lands are matters for the courts. 86 There exists no power in the Secretary of the Interior, or in any other officer of the government, to reconsider the facts on which a patent to public lands has issued, and to recall or rescind it, or to issue another for the same land. 87

Under the treaty making power of the United States, both authority and the duty to execute conveyances and make disposal of the public lands of the United States without the consent of Congress may be conferred upon the land department, 88 but otherwise, the action of the land department cannot override the expressed will of Congress, or convey away public lands in disregard or defiance thereof. 89

**§ 73 Construction [63A Am Jur 2d PUBLIC LANDS]**

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Although there are early authorities to the contrary, 19 it is now established that patents and land grants are construed favorably to the government, 20 and most strongly against the grantee. 21 Nothing passes by intendment or implication, 22 but the grant covers only that which is conveyed in clear language. 23 In this country at present, there can seldom be a presumption of a grant from the government, except in cases of very ancient possessions running back to colonial days, 24 or following on proof of an adverse, exclusive, and uninterrupted possession for 20 years. 25 Interests and rights that are reserved do not pass, 26 and exceptions intended for the benefit of the public are to be maintained and liberally construed. 27 If the law or a state deed fixes no limit to a grant, it becomes the duty of the courts to fix the narrowest limit that will reasonably satisfy its terms. 28 But since the policy of Congress in making grants for educational purposes has been generous, it is held that such grants must be so construed as to further that policy. 29

The intent to be searched for by the court in a government patent is the intent which the government had at the time, and not what it would have been had no mistake been made. 30 The true meaning of a binding expression in a patent must be applied, no matter in what part of the instrument it may be found. It should be so construed as to reconcile all its parts if possible, in order to effectuate the primary object Congress had in view; 31 and obviously, a construction that gives effect to a patent is to be preferred to one that renders it inoperative and void. 32 There is authority that a patent is subject to the same general rules of construction which apply to conveyances of individuals, 33 but this rule is rejected as too broad by other authorities. 34

A grant must be interpreted by the law of the country in force when it was made. 35 The construction of a federal grant by a state court is necessarily controlled by the federal decisions on the same subject. 36 And in cases depending on the law of a state, the settled construction thereof by the state courts is to be respected. 37 Unrestricted grants by the government bounded on streams or other waters are to be construed according to the laws of the state in which the lands lie. 38

**Footnote 19.** *Middleton v Pritchard, 4 Ill 510 (stating earlier rule in Illinois); Budd v Brooke (Md) 3 Gill 198*.

**Footnote 20.** *United States v Grand River Dam Authority, 363 US 229, 4 L Ed 2d 1186, 80 S Ct 1134, reh den 364 US 855, 5 L Ed 2d 79, 81 S Ct 33; United States v Union Pacific R. Co., 353 US 112, 1 L Ed 2d 693, 77 S Ct 685, 7 OGR 1129; Humboldt County v United States (CA9 Nev) 684 F2d 1276; Albrecht v United States (DC Wyo) 529 F Supp 135; De Boer v United States (DC Alaska) 470 F Supp 1137, revd on other grounds (CA9 Alaska) 653 F2d 1313; United States v Union Oil Co. (ND Cal) 369 F Supp 1289, 47 OGR 287, revd on other grounds (CA9 Cal) 549 F2d 1271, 55 OGR 425, 40 ALR Fed 799, cert den 434 US 930, 54 L Ed 2d 291, 98 S Ct 418, reh den 435 US 911, 55 L Ed 2d 502, 98 S Ct 1462; Phillips v State (Del Sup) 449 A2d 250; Cushing v State (Me) 434 A2d 486; Lewis Blue Point Oyster Cultivation Co. v Briggs, 198 NY 287, 91 NE 846, affd 229 US 82, 57 L Ed 1083, 33 S Ct 679.*

**Footnote 21**. *Utah v Andrus (DC Utah) 486 F Supp 995; United States v Union Oil Co. (ND Cal) 369 F Supp 1289, 47 OGR 287, revd on other grounds (CA9 Cal) 549 F2d 1271, 55 OGR 425, 40 ALR Fed 799, cert den 434 US 930, 54 L Ed 2d 291, 98 S Ct 418, reh den 435 US 911, 55 L Ed 2d 502, 98 S Ct 1462; State v Ashmore, 236 Ga 401, 224 SE2d 334, cert den 429 US 830, 50 L Ed 2d 93, 97 S Ct 90 and later app 245 Ga 390, 264 SE2d 891; Oregon S. L. R. Co. v Murray City, 2 Utah 2d 427, 277 P2d 798; Brody v Long, 13 Wis 2d 288, 108 NW2d 662*.

**Footnote 22.** *United States v Union Pacific R. Co., 353 US 112, 1 L Ed 2d 693, 77 S Ct 685, 7 OGR 1129; United States v Oregon & C. R. Co., 164 US 526, 41 L Ed 541, 17 S Ct 165; Kinscherff v United States (CA10 NM) 586 F2d 159; Albrecht v United States (DC Wyo) 529 F Supp 135; State v Ashmore, 236 Ga 401, 224 SE2d 334, cert den 429 US 830, 50 L Ed 2d 93, 97 S Ct 90 and later app 245 Ga 390, 264 SE2d 891*.

**Footnote 23.** *United States v Union Pacific R. Co., 353 US 112, 1 L Ed 2d 693, 77 S Ct 685, 7 OGR 1129; Burke v Gulf M. & O. R. Co. (CA5 Ala) 465 F2d 1206; Southern Idaho Conference Asso. of Seventh Day Adventists v United States (CA9 Idaho) 418 F2d 411; Albrecht v United States (DC Wyo) 529 F Supp 135; Utah v Andrus (DC Utah) 486 F Supp 995; Cushing v State (Me) 434 A2d 486.*

**Footnote 24**. *Oaksmith's Lessee v Johnston, 92 US 343, 23 L Ed 682.*

**Footnote 25**. *United States v Chaves, 159 US 452, 40 L Ed 215, 16 S Ct 57.*

For a federal statute permitting purchase of public lands held under color of title for 20 years, see § 64.

**Footnote 26**. *Southern Idaho Conference Asso. of Seventh Day Adventists v United States (CA9 Idaho) 418 F2d 411; Myers v United States, 180 Ct Cl 521, 378 F2d 696*.

**Footnote 27.** *Barden v Northern P. R. Co., 154 US 288, 38 L Ed 992, 14 S Ct 1030; Southern Idaho Conference Asso. of Seventh Day Adventists v United States (CA9 Idaho) 418 F2d 411*.

**Footnote 28**. *Pearl Oyster Co. v Heuston, 57 Wash 533, 107 P 349, reh den 57 Wash 539, 107 P 832*.

**Footnote 29.** *Johanson v Washington, 190 US 179, 47 L Ed 1008, 23 S Ct 825.*

**Footnote 30.** *Weaver v Knudson, 23 Wis 2d 426, 127 NW2d 217.*

**Footnote 31**. *Platt v Union P. R. Co., 99 US 48, 25 L Ed 424; Alexander v Lively, 21 Ky 159*.

**Footnote 32.** *Alexander v Lively, 21 Ky 159*.

**Footnote 33.** *Moore v Smaw, 17 Cal 199*.

**Footnote 34**. *Imperial Irr. Co. v Jayne, 104 Tex 395, 138 SW 575*.

**Footnote 35.** *Myers v United States, 180 Ct Cl 521, 378 F2d 696; United States v 3.08 Acres of Land (DC Utah) 209 F Supp 652; O'Fallon v Daggett, 4 Mo 343; Miller v Letzerich, 121 Tex 248, 49 SW2d 404, 85 ALR 451.*

**Footnote 36.** *Ritter v Morton (CA9 Idaho) 513 F2d 942, cert den 423 US 947, 46 L Ed 2d 281, 96 S Ct 362, reh den 423 US 1081, 47 L Ed 2d 91, 96 S Ct 869; Seaboard A. L. R. Co. v Board of Bond Trustees of Special Road & Bridge Dist., 91 Fla 612, 108 So 689, 46 ALR 870.*

Federal law governs as to the construction of a patent issued by the Federal Government. *United States v Boyd (CA6 Mich) 458 F2d 1252.*

**Footnote 37**. *Polk's Lessee v Wendal, 13 US 87, 3 L Ed 665.*

**Footnote 38.** *Summerville v Scotts Bluff County, 182 Neb 311, 154 NW2d 517.*

**§ 74 Effect of patent [63A Am Jur 2d PUBLIC LANDS]**

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where a patent was issued by mistake of the land department, the United States was entitled to a reconveyance, and in equity, remained the true owner.

A patent is the highest evidence of title, 39 and with it passes all control of the executive department of the government over the title, 40 its subsequent destruction or the mutilation of its record, by such department, does not impair its validity. 41 The patent, rather than the previously issued certificate, 42 vests the legal title in the patentee, 43 and gives him legal seisin. 44 Although it is not a judgment in the sense of the rules respecting estoppel by judgment, 45 on collateral attack a patent is conclusive, 46 even though the issuance was through mistake of the land officers. 47 It is variously characterized as "unassailable," 48 as "conclusive evidence of legal title," 49 and as at least "prima facie valid in actions at law." 50 It is prima facie valid, and the burden of proving its invalidity is on the one attacking it. 51 The sole remedy for or against a patent is in the courts, 52 by a direct proceeding, 53 and as a general rule, it is impeachable only for fraud or mistake. 54

A principle applicable to every grant is that it cannot affect pre-existing titles 56 or possessory rights acquired under licenses granted by the government prior to the entry under which patent issued, where entry was made under a statute which recognized the continuing right to possession under such licenses. 57 Under this rule, when an equitable right which originated before the date of the patent, whether by the first entry or otherwise, is asserted, it may be examined. 58

**Footnote 39.** *Wright v Roseberry, 121 US 488, 30 L Ed 1039, 7 S Ct 985; Irvine v Irvine, 76 US 617, 19 L Ed 800; File v State (Alaska) 593 P2d 268, cert den 444 US 929, 62 L Ed 2d 186, 100 S Ct 270; Raestle v Whitson, 119 Ariz 524, 582 P2d 170; State v Crawford, 13 Ariz App 225, 475 P2d 515; Solomon v Sioux City, 243 Iowa 634, 51 NW2d 472; Dugas v Powell, 228 La 748, 84 So 2d 177; Bustamante v Sena, 92 NM 72, 582 P2d 1285; State v Valmont Plantations (Tex Civ App 4th Dist) 346 SW2d 853, affd 163 Tex 381, 355 SW2d 502.*

**Footnote 40.** Moore v Robbins, *96 US 530, 24 L Ed 848; United States v Washington (CA9 Wash) 233 F2d 811; Bustamante v Sena, 92 NM 72, 582 P2d 1285.*

But see 43 USCS § 1718, discussed in § 59, authorizing the Secretary of the Interior to include in a patent or other document of conveyance issued for lands sold under the Federal Land Policy and Management Act such covenants and conditions as specified in the statute.

**Footnote 41.** *Bicknell v Comstock, 113 US 149, 28 L Ed 962, 5 S Ct 399.*

**Footnote 42.** § 69.

**Footnote 43.** *Swendig v Washington Water Power Co., 265 US 322, 68 L Ed 1036, 44 S Ct 496; Niles v Cedar Point Club, 175 US 300, 44 L Ed 171, 20 S Ct 124; Fordyce & McKee v Woman's Christian Nat. Library Ass'n, 79 Ark 550, 96 SW 155; Tennis Coal Co. v Sackett, 172 Ky 729, 190 SW 130; Hatch v Rhyne (Mo) 253 SW2d 170; Roads v Symmes, 1 Ohio 281.*

**Footnote 44.** *Peyton v Stith, 30 US 485, 8 L Ed 200; Barr v Gratz's Heirs, 17 US 213, 4 L Ed 553; Tennis Coal Co. v Sackett, 172 Ky 729, 190 SW 130; Overton's Heirs v Davisson, 42 Va 211.*

**Footnote 45**. *Dickson v Luck Land Co., 242 US 371, 61 L Ed 371, 37 S Ct 167.*

**Footnote 46.** *West v Standard Oil Co., 278 US 200, 73 L Ed 265, 49 S Ct 138; More v Steinbach, 127 US 70, 32 L Ed 51, 8 S Ct 1067; Union Pacific Land Resources Corp. v Moench Invest. Co. (CA10 Wyo) 696 F2d 88, cert den (US) 76 L Ed 2d 348, 103 S Ct 1776; Hill v Pipes, 236 La 105, 107 So 2d 409; Gardner v Fort, 72 Nev 160, 298 P2d 468; Bustamante v Sena, 92 NM 72, 582 P2d 1285*.

**Footnote 47.** *Northern P. R. Co. v McComas, 250 US 387, 63 L Ed 1049, 39 S Ct 546.*

An attack which first appeared in a cause of action asserting that the defendant claimed title by a patent which conveyed no mineral rights was collateral and not direct. *Dredge Corp. v Husite Co., 78 Nev 69, 369 P2d 676, cert den 371 US 821, 9 L Ed 2d 61, 83 S Ct 39.*

**Footnote 48.** *Sanford v Sanford, 139 US 642, 35 L Ed 290, 11 S Ct 666.*

**Footnote 49**. *Gibson v Chouteau, 80 US 92, 20 L Ed 534; Bagnell v Broderick, 38 US 436, 10 L Ed 235*.

**Footnote 50.** *Johnson v Drew, 34 Fla 130, 15 So 780, affd 171 US 93, 43 L Ed 88, 18 S Ct 800.*

**Footnote 51.** *State v Crawford, 13 Ariz App 225, 475 P2d 515.*

**Footnote 52**. *Love v Flahive, 205 US 195, 51 L Ed 768, 27 S Ct 486; Summerville v Scotts Bluff County, 182 Neb 311, 154 NW2d 517.*

After public land has passed out of the government by the issuance of a valid patent, the courts will protect private rights thereby acquired against interference by corrective surveys subsequently made by the land department. *United States v State Invest., Co. 264 US 206, 68 L Ed 639, 44 S Ct 289.*

**Footnote 56.** *New Orleans v De Armas, 34 US 224, 9 L Ed 109; Rogers v Brent, 10 Ill 573.*

**Footnote 57.** *Swendig v Washington Water Power Co., 265 US 322, 68 L Ed 1036, 44 S Ct 496 (right of way for electric transmission lines).*

**Footnote 58.** *Brush v Ware, 40 US 93, 10 L Ed 672; Tonopah & G. R. Co. v Fellanbaum, 32 Nev 278, 107 P 882.*

**77 Property and estate conveyed [63A Am Jur 2d PUBLIC LANDS]**

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A patent has a double operation. In the first place, it is documentary evidence having the dignity of a record of the existence of the title or such equities respecting the claim as justify its recognition and confirmation; 71 in the second place, it is a deed of the United States. 72 As a deed, its operation is that of a quitclaim, or rather of a conveyance of such interest as the United States possessed in the land. 73 It passes only the title the government has, 74 not only as it was at the time of the survey, but on the date of the patent. 75 It passes to the patentee all interest of the United States, whatever it may have been, in everything connected with the soil and in fact in everything embraced within the meaning of the term "land," 76 including appurtenances, 77 improvements, 78 and crops growing thereon at the time of the grant. 79 It sets at rest any question of sovereign ownership, 80 but does not necessarily control the rights of the litigants inter sese. 81 From the principles stated, it is obvious that a government grant is without any covenants of warranty whatever; 82 and it is clear also that the doctrine of estoppel does not apply thereto so as to pass an after-acquired title. 83

The description in a patent is exclusive evidence of the land conveyed. 84 If no reservation is made of a right or interest that ordinarily would pass by rules of law, and there is no act indicating an intention to make such a reservation, the conveyance includes all that would pass by it if it were a private grant. 85 If, however, a reservation is made, the grantee or patentee takes subject thereto, 86 and a subsequent patentee takes subject to a previous right of way established under a grant contained in a federal statute granting a right of way for highways over public lands not reserved for public uses. 87 Under some statutes applicable to the arid lands of the western states, it is required that all patents shall reserve a right of way for ditches or canals constructed by authority of the United States; 88 and such statutes have been liberally construed in favor of the government. 89 Public grants also sometimes make a present grant of lands for highway purposes, and in such a case a settlor upon such lands takes title subordinate to the right of the public to use the lands adjacent to the section lines for highways. 90

Where an act forbids the issuing of a patent upon a survey calling for a greater quantity of land than the party is entitled to by virtue of the warrant, it is the duty of the department to refuse the patent. In such a case, it is the right of the applicant to withdraw his survey, and resurvey his location, excluding such surplus quantity. 91

**Footnote 71.** *Langdeau v Hanes, 88 US 521, 22 L Ed 606; Teschemacher v Thompson, 18 Cal 11; Dugas v Powell, 228 La 748, 84 So 2d 177.*

**Footnote 72**. *Schell v White, 80 Ariz 156, 294 P2d 385; Dredge Corp. v Husite Co., 78 Nev 69, 369 P2d 676, cert den 371 US 821, 9 L Ed 2d 61, 83 S Ct 39.*

**Footnote 73**. *Wilson Cypress Co. v Del Pozo y Marcos, 236 US 635, 59 L Ed 758, 35 S Ct 446; Jefferis v East Omaha Land Co., 134 US 178, 33 L Ed 872, 10 S Ct 518; Anchorage v Nesbett (Alaska) 530 P2d 1324.*

The Secretary of the Interior may include covenants and conditions in patents or other documents of conveyance of public lands sold under the Federal Land Policy and Management Act. 43 USCS § 1718, discussed in § 59.

**Footnote 74**. *Sampeyreac v United States, 32 US 222, 8 L Ed 665*.

**Footnote 75.** *Jefferis v East Omaha Land Co., 134 US 178, 33 L Ed 872, 10 S Ct 518; Isaacs v Barber, 10 Wash 124, 38 P 871, error dismd 163 US 677, 41 L Ed 320, 16 S Ct 1198.*

**Footnote 76.** *Damon v Hawaii, 194 US 154, 48 L Ed 916, 24 S Ct 617; Energy Transp. Systems, Inc. v Union P. R. Co. (DC Wyo) 435 F Supp 313, 60 OGR 427, affd (CA10 Wyo) 606 F2d 934, 65 OGR 576; Moore v Smaw, 17 Cal 199; Hamilton v Badgett, 293 Mo 324, 240 SW 214; Crawford Co. v Hathaway, 67 Neb 325, 93 NW 781 (ovrld on other grounds Wasserburger v Coffee, 180 Neb 149, 141 NW2d 738, adhered to 180 Neb 569, 144 NW2d 209).*

**Footnote 77**. *Sage v Mayor, etc., of New York, 154 NY 61, 47 NE 1096.*

**Footnote 78.** *Floyd v Ricks, 14 Ark 286; Wincher v Shrewsbury, 3 Ill 283; Patterson v Chaney, 24 NM 156, 173 P 859, 6 ALR 90.*

**Footnote 79.** *Floyd v Ricks, 14 Ark 286; Michael Boyer & William Boyer v Williams, 5 Mo 335.*

**Footnote 80**. *Whaley v Wotring (Fla App D1) 225 So 2d 177; Dugas v Powell, 228 La 748, 84 So 2d 177.*

**Footnote 81.** *Whaley v Wotring (Fla App D1) 225 So 2d 177.*

**Footnote 82.** *Elmondorff v Carmichael, 13 Ky 472; Harrington v Port Huron, 86 Mich 46, 48 NW 641.*

**Footnote 83.** *23 Am Jur 2d, Deeds § 346.*

**Footnote 84.** *Ames v Irvine Co. (4th Dist) 246 Cal App 2d 832, 55 Cal Rptr 180, cert den 388 US 910, 18 L Ed 2d 1348, 87 S Ct 2113.*

Boundaries of lands recited in a patent, even if incorrect, are conclusive upon the United States and the patentees and their successors. *Grainger v United States, 197 Ct Cl 1018.*

**Footnote 85.** *United States v Wood (CA9 Or) 466 F2d 1385; Stewart v Lamm, 132 Colo 484, 289 P2d 916, 5 OGR 492.*

**Footnote 86.** *Allison v State, 101 Ariz 418, 420 P2d 289; Wiltbank v Lyman Water Co., 13 Ariz App 485, 477 P2d 771, petition den 107 Ariz 252, 485 P2d 822*.

All conveyances of title issued by the Secretary of the Interior under the Federal Land Policy and Management Act of 1976 reserve to the United States all minerals in the lands. 43 USCS § 1719, discussed in § 59.

As to reservation of rights of way, see § 31.

**Practice Aids:–Exceptions–Reservations in patents from United States. 16 Am Jur Legal Forms 2d, Real Estate Sales § 219:261**.

**Footnote 87.** *State v Crawford, 7 Ariz App 551, 441 P2d 586, later app 13 Ariz App 225, 475 P2d 515.*

**Footnote 88**. 43 USCS § 945.

**Footnote 89**. *Ide v United States, 263 US 497, 68 L Ed 407, 44 S Ct 182.*

**Footnote 90.** *Wells v Pennington County, 2 SD 1, 48 NW 305.*

**Footnote 91.** *Coan v Flagg, 123 US 117, 31 L Ed 107, 8 S Ct 47.*