

EL RANCHO PISTACHIO

IBLA 97-449

Decided January 19, 1999

Appeal from a decision of the Arizona State Office, Bureau of Land Management, rejecting in part an application for conveyance of Federally-owned mineral interests. AZA 29036.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Reservation and Conveyance of Mineral Interests

BLM properly rejects an application for conveyance of a Federally-owned mineral interest, pursuant to section 209(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1719(b) (1994), where the applicant fails to establish that there are no known mineral values in the land, or that reservation of the mineral interest is interfering with or precluding appropriate nonmineral development which is a more beneficial use of the land than mineral development.

APPEARANCES: Joe V. Anderson, Phoenix, Arizona, for El Rancho Pistachio; Richard R. Greenfield, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Phoenix, Arizona, for the Bureau of Land Management.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

El Rancho Pistachio (El Rancho) has appealed from that part of a May 20, 1997, decision of the Arizona State Office, Bureau of Land Management (BLM), rejecting its application for conveyance of the Federally-owned mineral interest in the salable minerals in 453 acres described as lots 2, 11, and 12 and the SE $\frac{1}{4}$, sec. 28, and lot 1 and the NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, sec. 33, T. 11 N., R. 6 W., Gila and Salt River Meridian (G&SRM), Yavapai County, Arizona. 1/

1/ On July 6, 1998, El Rancho filed a motion to consolidate this appeal with its appeal of a BLM trespass decision (IBLA 97-561). By order dated Aug. 19, 1998, the Board took the motion under advisement pending review of the two appeals. That review has disclosed significant differences in the appeals which render consolidation inappropriate. Therefore, we deny the motion to consolidate. El Rancho has also requested an evidentiary hearing and oral argument of this appeal. The appeal raises no unresolved issues of material fact warranting a hearing, and the issues have been comprehensively briefed negating the need for oral argument. Accordingly, we deny both requests.

On February 28, 1995, El Rancho filed an application pursuant to section 209(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1719(b) (1994), ultimately seeking conveyance of the Federally-owned mineral interest in 3,919 acres of land within secs. 8, 9, 17, 19, 20, 21, 28, 29, and 33, T. 11 N., R. 6 W., G&SRM, Yavapai County, Arizona. El Rancho is the current owner of the surface estate of these lands which were patented by the United States with reservations of the mineral interests. The application stated that El Rancho was unaware of any mineral value in the lands, except for boulders located in remote and rugged terrain which rendered them expensive and difficult to recover. It referred BLM to the case file for approved conveyance application No. AZA 24479 submitted by Little Horse Ranch for adjacent property, asserting that both properties contained the same mineralization and had the same value. El Rancho indicated that the current uses for the land included residential housing, farming, and cattle grazing; that some of the land could be used for commercial and residential development in the near future; that mineral development on the parcels would disrupt the existing farming and ranching operations as well as any future development; that some of the parcels encompassed unique riparian and scenic locations that would be irreparably damaged by any mineral removal; and that the highest and best use of the land entailed preserving the riparian and scenic areas.

In the April 9, 1997, mineral report prepared by Michael N. Johnson, BLM geologist, to assess the mineral potential of the affected lands (the Johnson Report), Johnson concluded that, except for the 453 acres within lots 2, 11, and 12 and the SE $\frac{1}{4}$, sec. 28, and lot 1 and the NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, sec. 33, the applied for lands had no known mineral values and recommended that the mineral rights for those be conveyed. He found that the remaining 453 acres had known mineral value due to occurrences of granite boulders suitable for decorative rock, and that, therefore, the mineral rights for salable minerals should be retained for those lands. (Johnson Report at 3.) After reciting the history of boulder removal from portions of the lands, including trespass actions and mineral material sales contracts for boulders in secs. 28 and 33, Johnson determined that accessible boulders existed on the 453 acres. Applying the criteria set forth in section 3031 of the BLM Manual, he placed those lands within mineral potential classification H/D, i.e., the available data provided abundant direct and indirect evidence of a high potential for mineral resources. See Johnson Report at 8-9, 11. Although the E $\frac{1}{2}$ of sec. 21 also contained granite boulders, Johnson observed that those boulders were located in rugged, inaccessible terrain. Id. at 11. He stated that BLM currently charged a \$10/ton F.O.B. royalty rate for boulders, and that their retail price in Phoenix was \$0.05-0.06/lb delivered. Id. He also concluded that the mineral reservation to the United States of the salable minerals would not interfere with or preclude the nonmineral development of the lands, which were presently being used for grazing and boulder removal. Id. at 3.

In its May 20, 1997, decision, BLM approved El Rancho's application in part and rejected it in part to the extent it included lands which the report concluded had known mineral values for salable minerals. Specifically, BLM authorized the issuance of a patent for all of the Federally-owned mineral interests in 3,466 acres of the land sought and for all the

Federally-owned mineral interests in the remaining 453 acres, except for the interests in the salable minerals in lots 2, 11, and 12 and the SE $\frac{1}{4}$, sec. 28, and lot 1 and the NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, sec. 33, which would be retained by the United States.

On appeal, El Rancho insists that it has a constitutional right to be treated the same as its neighbor Little Horse Ranch whose application for conveyance of Federally-owned minerals (AZA 24479) on 7 parcels of land, covering approximately 2,266 acres, was approved by BLM, and that due process requires that the mineral survey prepared in October 1990, by Robert C. Fisk, BLM mineral examiner, for the Little Horse Ranch application (the Fisk Report) 2/ be used for its application as well due to the congruity of locality, type, condition, and geographic area of the requested mineral rights. The Johnson Report erred, El Rancho maintains, because it disagreed with the Fisk Report by valuing differently identical adjacent mineral material, thus leading to the unjustifiable rejection of its mineral rights application despite Little Horse Ranch's receipt of mineral rights for \$200. El Rancho cites the Fisk Report's conclusions that, while the boulders on parcel 2, including lands within sec. 1, T. 10 N., R. 6 W., G&SRM, had commercial value because they were accessible, those found on parcel 1, containing lands within secs. 7, 8, 17, and 18, T. 10 N., R. 5 W., G&SRM, had no commercial value because they were inaccessible and those located on parcel 3, embracing lands within secs. 4 and 5, T. 10 N., R. 6 W., and sec. 33, T. 11 N., R. 6 W., G&SRM, had no commercial value because their numerous fracture plains rendered them weak and susceptible to breakage when removed. El Rancho argues that the Johnson Report did not adequately address the impediments to extracting the boulders on its property which far surpass the difficulties of removing boulders from the Little Horse Ranch lands. It further complains that the Johnson Report failed to consider its planned use of the land for an exclusive subdivision or dude ranches and/or horse ranches and asserts that its title to the lands would be clouded without title to the mineral rights as well. 3/

In its Answer, BLM denies that the Fisk Report controls El Rancho's application, pointing out that the lands at issue in the Fisk Report are not the same lands as those evaluated in the Johnson Report. BLM asserts

2/ El Rancho actually relies on a Jan. 20, 1993, addendum to the Oct. 25, 1990, Fisk Report, authored by Paul J. Buff, which modified the original report by concluding that boulders on two of the parcels (parcels 1 and 3) had no commercial value and valuing the commercial boulders on the third parcel (parcel 2) at \$200.

3/ El Rancho also contends that due process required BLM to notify and afford it an opportunity to be heard before BLM raised the royalty rate for boulders from \$1/ton to \$10/ton, arguing that the royalty rate increase, in conjunction with the approval of Little Horse Ranch's application, effectively established and perpetuated a monopoly in the decorative boulder market. The appealed BLM decision does not address the royalty rate which was set in 1993, and the validity of the rate increase is not properly before us and will not be addressed.

that the Johnson Report, which applied the amended 1995 definition of known mineral values, was carefully reasoned and contained information not set forth in the Fisk Report, including evidence that, contrary to the Fisk Report's assumption, several hundred tons of granite boulders have been successfully removed from parcel 3 since Little Horse Ranch received a patent for those mineral rights. ^{4/} BLM suggests that the Fisk Report may have erred in equating commercial value with known mineral value, and that, given the earlier issuance of a mineral material contract for the sale of 200 tons of boulders on the Little Horse Ranch lands, the Fisk Report may also have wrongly determined that those lands had no known mineral value. BLM submits that, even if the lands and minerals were identical and the reports had been prepared at the same time under the same regulatory definition, the Little Horse Ranch decision still would not have been appropriate precedent for El Rancho's application. BLM further maintains that, unless access is unavailable, access is not a factor in the geology-based known mineral value question, again noting that available evidence indicates that boulders have been and will continue to be produced from sec. 33. BLM acknowledges that the Johnson Report did not address whether retaining some of the Federally-owned mineral rights would constitute a cloud on El Rancho's surface title but avers that the Report implicitly found that no houses existed on the lands and that, therefore, use of the land for residential housing is purely speculative and did not need to be addressed in the Report. BLM submits that El Rancho has also failed to establish that grazing or urban development would be a more beneficial use of the land.

[1] Under section 209(b) of FLPMA, the record owner of the surface estate in land may obtain conveyance of the underlying Federally-owned mineral interest only if the Secretary finds "(1) that there are no known mineral values in the land, or (2) that the reservation of the mineral rights in the United States is interfering with or precluding appropriate nonmineral development of the land and that such development is a more beneficial use of the land than mineral development." 43 U.S.C. § 1719(b)(1) (1994). See also 43 C.F.R. Subpart 2720; William Y. Ganus, 122 IBLA 255, 256-57 (1992). The regulations define "known mineral values" as "mineral rights in lands containing geologic formations that are valuable in the monetary sense for exploring, developing, or producing natural mineral deposits. The presence of such mineral deposits with potential for mineral development may be known because of previous exploration, or may be inferred based on geological information." 43 C.F.R. § 2720.0-5(b). A BLM decision denying an application for the conveyance of the Federally-owned mineral interest will be reversed only if it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 43 C.F.R. § 2720.5. The applicant has the burden of rebutting BLM's determination that the affected lands have known mineral values or of demonstrating that the reservation of the mineral interest is interfering with or precluding appropriate nonmineral development and that such development is

^{4/} Parcel 3 of the lands conveyed to Little Horse Ranch included lands in sec. 33, T. 11 N., R. 6 W., G&SRM. Some of the lands in question are within the same section.

a more beneficial use of the land. William Y. Ganus, 122 IBLA at 258-59; Richard L. Dickard, Sr., 90 IBLA 83, 86 (1985); Jean Hubbard Waters, 89 IBLA 179, 182 (1985). El Rancho has failed to meet its burden of showing that either of the statutory prerequisites for conveyance has been met.

El Rancho's appeal centers on its claim that BLM was obligated to apply the Fisk Report's "no mineral values" determination to its application. We find that the Fisk Report, prepared in 1990 and amended in 1993, has no relevance to the question of whether the lands sought in El Rancho's 1995 application currently have known mineral values. That report addressed the value of different lands at a different time under different circumstances. The mineral values question, however, must be analyzed in light of current market conditions. See 60 Fed. Reg. 12710 (Mar. 8, 1995). BLM would have violated its statutory and regulatory responsibilities if it had mechanically applied an earlier mineral report prepared for a different conveyance application regardless of current conditions.

El Rancho recognizes that granite boulders from the portion of sec. 33 patented to Little Horse Ranch have been successfully removed and sold. Thus, at the time the Johnson Report was prepared, those sales provided additional evidence to support a conclusion that the lands in question contained geologic formations, which were valuable in a monetary sense. El Rancho has provided no evidence rebutting BLM's conclusion that the lands in question have known mineral values. To the contrary, El Rancho admits that it had previously removed and sold boulders from the affected lands and only decided to apply for conveyance of the Federally-owned mineral interest when BLM's increase in the royalty rate for those boulders from \$1/ton to \$10/ton rendered their extraction and sale less profitable. See Statement of Reasons at 2-3.

El Rancho challenges the Johnson Report's failure to consider access and extraction difficulties created by the remote and rugged terrain of the lands it seeks, asserting that extraction problems would be greater than those the Fisk Report found sufficient to render similar deposits in the Little Horse Ranch lands not commercially valuable.

Contrary to El Rancho's assertion, the Fisk Report addendum did not rely on access considerations in concluding that the boulders on parcel 3 were not commercially valuable. Rather, the basis for that conclusion, later proved incorrect, was a perceived inherent weaknesses in the boulders themselves, i.e., their numerous fracture planes which purportedly rendered them more susceptible to breaking. Moreover, the Johnson Report did consider accessibility, at least cursorily, as evidenced by the findings that "[a]ccessible boulders" were found on the affected lands but that boulders located in the E½ sec. 21 were situated in rugged, inaccessible terrain. (Johnson Report at 11.) El Rancho has not shown that boulders in the affected parts of secs. 28 and 33 are inaccessible and, in fact, its history of extracting boulders from those lands clearly demonstrates that any access impediments are not insurmountable. Accordingly, we find that El Rancho has not rebutted BLM's determination that the applied for lands contain known salable mineral values rendering them unsuitable for conveyance.

El Rancho also has not shown that the mineral reservation in the United States will preclude or interfere with its planned uses of the land or that its nonmineral development is a more beneficial use of the land than mineral development. In its application, El Rancho indicated that the land it sought was currently used for residential housing, farming, and cattle grazing, and that some of it might be used in the future for commercial and residential development. It also intimated that mineral development on the parcels would disrupt the existing farming and ranching operations as well as any future development, and that parcels encompassing unique riparian and scenic locations would be irreparably damaged by any mineral removal. The Johnson Report found, however, that the 453 acres in secs. 28 and 33 containing granite boulders were currently being used for grazing and boulder removal and concluded that reservation of the salable minerals in those lands would not interfere with or preclude nonmineral development of the lands. (Johnson Report at 3.) Although El Rancho now avers that it plans on creating an exclusive subdivision or dude ranches and/or horse ranches on the lands in question and that title to those lands would be clouded if it did not have title to the mineral rights, it has offered no concrete plans for such development, nor has it demonstrated how reservation of the mineral interest is presently interfering with or precluding such development. See William Y. Ganus, 122 IBLA at 259. Allegation, hypothesis, or speculation that nonmineral development might take place sometime in the future is not a sufficient basis for conveyance. 43 C.F.R. § 2720.0-6; Wayne D. Klump, 123 IBLA 51, 65, 99 I.D. 64, 71 (1992). Thus, we find that El Rancho has failed to satisfy either statutory condition for conveyance of the Federally-owned mineral interests in the salable minerals in the affected 453 acres, and that its application for conveyance of those interests was properly denied.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Deputy Chief Administrative Judge

I concur:

John H. Kelly
Administrative Judge

