

HARRY E. HAWKENSON
AND
MARIE CHRISTINE HAWKENSON

IBLA 73-201

Decided October 10, 1973

Appeal from decision of State Office, Bureau of Land Management, Sacramento, California, rejecting appellants' application R-994 to purchase land pursuant to the Mining Claims Occupancy Act and offering them a lifetime lease to approximately 0.71 acres of the land sought.

Affirmed as modified.

Mining Occupancy Act: Generally! ! Mining Occupancy Act:
Acreage to be Conveyed

The determination of the extent of the relief that will be granted to a qualified applicant under the Act of October 23, 1962, as to lands under the jurisdiction of the Department of the Interior, is committed to the discretion of the Secretary of the Interior, and where the determination to award an applicant a lifetime lease or portion of the land applied for rests upon a rational basis, it will not be disturbed.

APPEARANCES: Harry E. Hawkenson, pro se.

OPINION BY MR. STUEBING

Harry E. Hawkenson and Marie Christine Hawkenson appeal from an October 31, 1972, decision of the State Office, Bureau of Land Management, Sacramento, California, rejecting their application filed pursuant to the Mining Claims Occupancy Act of October 23, 1962, as amended, 30 U.S.C. §§ 701-709 (1970) to purchase approximately five acres of land situated in Kern County, California.

On October 20, 1967, appellants filed an unconditional relinquishment of their Sunset Placer Mining Claim to the United States ^{1/} and an application to purchase five acres of land formerly embraced by the claim. In the application they stated that their predecessors in interest, Peter and Theresa Erickson, had maintained residence on the property as of July 23, 1955. The appellants alleged that they have resided on the property since November 29, 1957. When they acquired the property there was a small cabin on the site which they improved by adding a living room and den, installing a freight car adapted to a sleeping room and putting in a new kitchen floor. Other improvements listed in the application included a shed, corral for horses, well, windmill, tank, storage room, cesspool and sewer, new water lines, bathroom, trees and shrubs.

In its land report made in response to the appellants' application, the Bureau of Land Management found the Hawkensons to be qualified applicants under the Act. The report stated that the large block of public domain which embraces the Hawkensons' claim had been classified for multiple use management with open space and recreation recognized as the primary values. The report noted that the site of Bakersfield Desert College is about two miles from the property. An important consideration in locating the college was the surrounding block of unspoiled desert available for studying and enjoyment. The report analyzed the land ownership pattern of the surrounding area. It showed that south of Ridgecrest there are a few scattered tracts of patented land within the public domain, two of which were patented under the Mining Claims Occupancy Act. These inholdings proved to be a hindrance rather than an asset to Bureau's program which recognized this area as most valuable for recreational purposes. To the north of this block, the Bureau's small tract program in the late 1950's was characterized as "a disaster." Since a patent would perpetuate inholdings incompatible with the Bureau's program, the report recommended a lease.

On the basis of this report the State Office issued its decision rejecting the application for fee title and offering a lifetime lease which set the lump sum rental at \$500. The decision also assessed past use charges from November 1967, the date of relinquishment of the claim, through October 1972, at \$369.36. As a

^{1/} The District and Land Office, Riverside, California accepted the relinquishment of the mining claim on November 30, 1967.

condition to the lease, the appellants were required to remove all improvements outside the boundary of the lease including the corral and all scrap, junk and miscellaneous items within 90 days. They were also required to fill all prospect holes in order to remove potential public hazards. The decision provided that appellant would be allowed 30 days from the receipt of the letter within which to accept the offer by returning the lease forms properly executed and paying the past use charges and either the lump sum of \$500 or the first year's rental of \$56. Appellants submitted neither.

On appeal the Hawkensons attempt to refute the Bureau's conclusion that the land is most valuable for recreational purposes. They state that the five acres of land which they seek are in a very narrow corridor between U.S. Highway 395 and a railroad line and that the use of the land for recreational purposes is against the public interest. They claim that recreation activities would cause erosion and handicap the use of the highway. They also point out that there are a number of privately owned tracts in the area and that recreational activities on this land would present a problem to these property owners.

30 U.S.C. § 701 (1970) provides as follows:

The Secretary of the Interior may convey to any occupant of an unpatented mining claim which is determined by the Secretary to be invalid an interest, up to and including a fee simple, in and to an area within the claim of not more than (a) five acres * * *.

The language of this statute clearly indicates that conveyance is within the discretionary authority of the Secretary, even though the appellants have met the requirements. The Mining Claims Occupancy Act does not give appellants the unqualified right to receive a fee simple estate. Charles A. Hendel, 8 IBLA 400 (1972). The determination of the extent of relief that will be granted, as to land within the jurisdiction of the Department of the Interior, is also within the Secretary's discretion and will not be disturbed if it rests upon a rational basis. Harold E. Trowbridge, A-30954 (January 17, 1969); Arland E. Purington, 10 IBLA 118 (1973).

We find that the Bureau has presented a rational basis for this decision. The Bureau determined residential occupancy to be

an inholding incompatible with management objectives to preserve the land for open space and recreation. It is reasonable that the view of uninterrupted open space would be destroyed by such occupancy and persons would be deterred from enjoying this land for recreational purposes. The Bureau felt that granting a patent in this case would encourage others to seek land in the area. There is no abuse of discretion in offering a lease when it appears that a more permanent tenure would be incompatible with good land management practices. Arland E. Purington, supra; See also Richard O. Morgan, 10 IBLA 141 (1973).

The facts in this case bear a marked resemblance to those in the Purington case. The Hawkensons and Puringtons both applied for patents to land in the NE 1/4 of sec. 5, T. 28 S., R. 40 E., M.D.M., California, and the Bureau's land reports reflected similar analysis and conclusions in both cases. 2/ In the Purington decision at p. 123, the Board referred to the legislative history of the Act in which the Senate Committee on Interior and Insular Affairs emphasized the Secretary's discretion by stating:

Section 1 gives to the Secretary of the Interior discretionary authority to convey to an occupant of an unpatented mining claim not more than either 5 acres of land or the acreage actually occupied, whichever is less. * * *

The term 'may convey' is fully intended to establish the discretionary nature of the authority conveyed to the Secretary. * * *

Where land is now needed or known to be needed for public uses or purposes * * * [the Secretary] is under no directive to grant the use of land. In addition, he will be expected to exercise sound discretion in setting standards as to the

2/ See also Lief N. Johnson, 10 IBLA 354 (1973) which concerns a lease offer under the Small Tract Act of June 1, 1938, as amended, 43 U.S.C. §§ 682a-682e (1970) to land in the same block of the public domain. The Board denied two of appellants' requests for changes in the lease on the basis that such changes conflicted with the Bureau's recognition that the primary value of this land was for open space and recreation.

circumstances under which a fee simple patent, life estate, lease or term permit would be appropriate to the facts and consistent with the public interest.

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* * * The legislation does not intend that applicants shall displace public use of public land, or that land should be patented in fee in areas where such action would produce results at odds with public land programs. For these situations, where equities exist or hardship would result, the qualified applicants can generally be granted life estates for the remainder of their lives or permission to occupy the land for appropriate periods. [S. Rep. No. 1984, 87th Cong., 2d Sess. 5, 7 (1962).]

The Bureau had offered the Puringtons a lifetime lease to 1.1 acres, and the Board upheld this decision, noting that the Bureau's decision had been in keeping with the intent of the Act which is "to permit persons who live on mining claims for residential purposes * * * to continue to reside in their home." S. Rep. No. 1984 supra at 3.

In light of the similarities between the Puringtons' case and the case at bar, and finding no reason to deviate from our previous rationale, it is our opinion that a lifetime lease strikes a fair compromise between the Bureau's interest to preserve the land for recreational purposes and the appellants' desire to enjoy the property as their residence. Appellants mentioned in their application to purchase that they had invested \$12,000 in the property and had expected to remain there for the rest of their lives. A lifetime lease would afford them this opportunity.

Appellants also protest that the boundaries of the leasehold offered them excludes their well and windmill. A plat of the area shows the windmill to be 159 feet on a diagonal course from the northwest corner of the tract. The report of field investigation notes the existence of the windmill and well and describes them as the improvements of the applicants. Accordingly, the offered lease will be amended to incorporate an appropriate provision for appellants' continued use of the windmill and the well.

The other arguments of appellants have been reviewed but do not warrant reversal of the decision.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Office is affirmed as modified hereby.

Edward W. Stuebing
Member

We concur:

Joseph W. Goss
Member

Joan B. Thompson
Member

