

THE KEMMERER COAL COMPANY

IBLA 76-405

Decided July 30, 1976

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting public sale application W-40610.

Affirmed.

1. Mineral Leasing Act: Generally -- Public Sales: Generally -- Secretary of the Interior

The Secretary of the Interior has complete discretion to determine whether the surface of public land reported as valuable for any leasable mineral should be disposed of and a nonmineral application may be allowed only if it is determined by the proper officer with the concurrence of the Director, Geological Survey, that the disposal of the lands under the nonmineral application will not unreasonably interfere with current or contemplated operations under the Mineral Leasing Act.

2. Geological Survey -- Public Sales: Generally -- Public Sales: Applications

A determination by the United States Geological Survey that certain lands under a public sale application are valuable for various leasable minerals will not be disturbed in the absence of a clear showing by the applicant that such determination was improperly made.

APPEARANCES: Roy Coulson, President, The Kemmerer Coal Company, Frontier, Wyoming.

## OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

The Kemmerer Coal Company (Kemmerer) has appealed from a decision of the Wyoming State Office, Bureau of Land Management, dated December 4, 1975, rejecting public sale application W-40610 filed by appellant on June 21, 1973, pursuant to the Isolated Tract Act, 43 U.S.C. § 1171 (1970). The application covered 164.81 acres in section 17, T. 21 N., R. 116 W., 6th P.M., Lincoln County, Wyoming.

The decision cited as grounds for the rejection adverse comments submitted by the United States Geological Survey (USGS) to BLM in a memorandum dated October 6, 1975. USGS informed BLM that the land embraced by the application was within a known coal leasing area and that the land was valuable for oil, gas, sodium and potassium. USGS also stated that exercise of surface rights would unreasonably interfere with operations under the mineral leasing laws.

Appellant claims that assuming the BLM rejection was based on the application covering land in a known coal leasing area, the decision is erroneous because the regulations concerning nonmineral entries on mineral land, 43 CFR 2093.0-3 through 43 CFR 2093.0-8, expressly provide for the disposal of a surface whose mineral estate has been claimed.

Appellant also contends that the land applied for is not valuable for oil, gas, sodium, or potassium, and even if one or more of them were present, neither USGS nor BLM made any showing that "sale of the surface would unreasonably interfere with the mining thereof."

The regulations governing sales of isolated tracts of public lands indicate what types of land are subject to sale pursuant to the Isolated Tract Act, 43 U.S.C. § 1171 (1970). In addition to providing that the Secretary of the Interior has full discretion to determine whether lands should be made available under the Act, 43 CFR 2710.0-8(c) provides:

\* \* \* Lands which are mineral in character will not be sold, but this is not to imply that lands which are not mineral in character, as defined in paragraph (e) of § 2710.0-5, will be sold regardless of whether they possess some mineral value, present or prospective.

The USGS has reported that the land is in a known coal leasing area <sup>1/</sup> and valuable for oil, gas, sodium, and potassium. The

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<sup>1/</sup> In fact, appellant has a coal leasing application, W 50597, for the same land presently pending with BLM.

regulation under the public sale provision which defines "mineral in character," 43 CFR 2710.0-5(e), states:

(e) The term "mineral in character" refers to lands where the mineral is ordinarily in sufficient quantity to add to their richness and to justify expenditures for its extraction. A "mineral" is a substance that (1) is recognized as mineral, according to its chemical composition, by the standard authorities on the subject or (2) is classified as mineral product in trade or commerce; or (3) possesses economic value for use in trade, manufacture, the sciences, or in the mechanical or ornamental arts. However, the word "mineral", for the purposes of the regulations of this part, does not include those that must be reserved to the United States pursuant to the regulations in §§ 2093.0-3 to 2093.4-3.

The minerals for which the USGS has indicated the subject land is valuable are among those which must be reserved to the United States; therefore, the land in question is not "mineral in character" within the meaning of the public sale regulations.

[1] Pursuant to the regulations governing nonmineral entries on mineral lands, 43 CFR 2093.0-3(a), the Secretary of the Interior has complete discretion to determine whether the surface of public lands reported as valuable for any leasable mineral should be disposed of, and a nonmineral application may be allowed only:

\* \* \* if it is determined by the proper officer, with the concurrence of the Director, Geological Survey, that the disposal of the lands under the nonmineral application will not unreasonably interfere with current or contemplated operations under the Mineral Leasing Acts. \* \* \*

While it is true that the regulations, supra, make provision for disposal of the surface of lands such as those involved herein, the USGS has determined that disposal in this instance would not be in the public interest. 2/

2/ Appellant herein filed a petition for classification together with its application for public sale. In light of the determination by the Geological Survey that disposal of the land would interfere unreasonably with operations contemplated under the Mineral Leasing Act, it is unnecessary for BLM to consider the petition for classification under 43 CFR Subpart 2450.

[2] Appellant's claim that neither BLM nor USGS has established that surface occupancy would unreasonably interfere with mineral leasing operations is unfounded. The burden is on appellant to present a convincing and persuasive argument to rebut the conclusions of the USGS. See Clear Creek Inn Corporation, 7 IBLA 200, 213, 79 I.D. 571, 577 (1972). In the absence of a clear showing that the determination was improperly made, the Board will not disturb a determination made by the USGS. William J. Coleman, 9 IBLA 15, 20 (1973); Clear Creek Inn Corporation, *supra*. Appellant has produced no evidence to persuade us that the USGS determination was improperly made. BLM, exercising the discretionary authority of the Secretary in accordance with the recommendation of USGS, rejected the public sale application. Such action was proper.

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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Douglas E. Henriques  
Administrative Judge

We concur:

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Joan B. Thompson  
Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge

