

DEAN A. AND CRAIG D. CLARK

IBLA 80-352

Decided March 30, 1981

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting application for conveyance of mineral interest. W 69908.

Affirmed.

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

Bureau of Land Management may reject an application for conveyance of mineral interests pursuant to sec. 209(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1719(b) (1976), upon a determination that the application is fatally defective under 43 CFR 2720 or that conveyance would not be in the public interest.

APPEARANCES: Scott R. Condray, Esq., St. Francis, Kansas, for appellants.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Dean A. and Craig D. Clark have appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated December 20, 1979, rejecting appellants' application, W 69908, pursuant to section 209(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1719(b) (1976), for conveyance of the mineral interest owned by the United States. The application was rejected because there are mineral values in the land and because the application did not present any information that showed that the reservation of the mineral rights was interfering with nonmineral development or use of

the land. 1/ The decision stated that it was based in part on an enclosed Geological Survey (Survey) report that indicated that the land had mineral values.

Appellants are the record owners of the surface of the subject land. In their statement of reasons for appeal, they allege that the value placed on the mineral interest was "arbitrary, capricious, and an abuse of discretion." They contend that the Survey report should have taken into account two dry hole wells drilled close to the subject land, rather than two productive wells drilled farther away. They also state that the fragile nature of the land precludes the use of earth-moving equipment and that underground water for drilling is unavailable.

Section 209(b)(1) of FLPMA provides that:

The Secretary, after consultation with the appropriate department or agency head, may convey mineral interests owned by the United States where the surface is or will be in non-Federal ownership, regardless of which Federal entity may have administered the surface, if he 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 non-mineral 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) (1976).

In their application for conveyance of the mineral interest, appellants make no allegation that reservation of the mineral interest is interfering with or precluding appropriate non-mineral development of the land. 2/ However, they do allege that there are no known mineral values in the land. As this is disputed in the Survey report upon which the BLM decision was based, the present case centers on this question.

1/ The land covered by this application is all located in T. 1 S., R. 42 W., sixth principal meridian, Cheyenne County, Kansas, and is described as follows:

sec. 22, E 1/2 SW 1/4

sec. 26, SW 1/4, W 1/2 SE 1/4

sec. 27, SE 1/4 NE 1/4, NE 1/4 NW 1/4, E 1/2 SE 1/4

sec. 34, E 1/2 NE 1/4

2/ In fact, in the application appellants state that the existing use of the land is pasture. They also state that "the mineral interests of the United States would affect the price of said land when sold for pasture." The application indicates that the apparent reason for seeking the mineral interest is that appellants "could receive a higher price for said land when sold" if the mineral interests could also be conveyed.

The Survey report states that there is oil production "about 5 miles south" and gas production "about 7 miles south southeast" of the subject land. The report concluded that "[b]ased on the examination of all available geological information and considering mineral economic conditions at this time, a mineral value of about \$60.00 an acre has been determined for lands in the application." The report also recommends "an exploratory program to evaluate the land in the application because the data used to obtain the * * * per acre mineral value has been mostly presumed or estimated." However, it states that "the exploratory cost to evaluate the oil and gas potential of the lands in the application would be \$535,960 or four wells at \$133,990 a piece."

On the other hand, appellants assert that Survey failed to consider in its evaluation two dry hole wells, one drilled in 1952 about one-half mile north of the subject land at a depth of about 5,600 feet and the other drilled in 1978 about 1-1/2 mile east of the subject land at a depth of about 4,900 feet.

[1] Under the language of section 209(b)(1) of FLPMA, supra, the Secretary has the discretionary authority to reject an application for conveyance of a mineral interest upon a determination supported by facts of record that conveyance would not be in the public interest, considering the criteria listed in that section. Basin Electric Power Cooperative, 50 IBLA 197 (1980).

The BLM decision was essentially based on the Survey report. As we have stated on many occasions, Survey is the Secretary's technical expert in matters concerning geologic evaluation of tracts of land and the Secretary is entitled to rely on Survey's reasoned analysis in such matters. Southern Union Exploration Co., 51 IBLA 149 (1980); Gerald S. Ostrowski, 34 IBLA 254 (1978); Arkla Exploration Co., 25 IBLA 220 (1976).

The burden is on appellants to present a convincing and persuasive argument to rebut BLM's determination that the subject land has mineral values. See Donnie R. Clouse, 51 IBLA 221 (1980); The Kemmerer Coal Co., 26 IBLA 127 (1976). In the absence of a clear and definite showing of error, we will not disturb BLM's determination. Id.

Appellants allege that there are no known mineral values. Their only evidence is an allegation that two dry hole wells were drilled relatively close to the subject land. This allegation does not establish that the subject land does not contain mineral values. Moreover, appellants' contentions relating to the fragile nature of the land and the unavailability of underground water have no bearing on the question of known mineral values.

BLM properly rejected appellants' application.

Therefore, 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.

Bruce R. Harris
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Anne Poindexter Lewis
Administrative Judge

