

ROBERT GATTIS ET AL.

IBLA 82-1351

Decided May 19, 1983

Appeal from a decision of the Eastern States Office, Bureau of Land Management, rejecting application for conveyance of mineral interests. ES 28532.

Affirmed.

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

An application for conveyance of mineral interest to the owner of the surface estate pursuant to sec. 209(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1719(b) (1976), may be approved where BLM determines (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. Absent a finding of the existence of one of these conditions, an application is properly rejected.

APPEARANCES: P. K. Holmes III, Esq., Fort Smith, Arkansas, for appellants.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Robert Gattis et al. <sup>1/</sup> appeal the August 13, 1982, decision of the Eastern States Office, Bureau of Land Management (BLM), rejecting their

---

<sup>1/</sup> The other appellants are John C. Ragon, Jr., Betty A. Ragon, and Mary R. Gattis.

application, 2/ ES 28532, made on May 6, 1981, pursuant to section 209(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1719(b) (1976). The application was for conveyance of the federally-owned mineral interests 3/ that were reserved to the United States under serial patents 1151238 and 1155734. Appellants are the record owners 4/ of the surface of the subject lands.

Upon receipt of appellants' application, BLM requested that Geological Survey (Survey) prepare a report on the mineral value of the land. If Survey determined that mineral value was present, it was requested to provide either (1) the fair market value of the minerals with supporting evidence and documentation or, (2) the estimated cost of (a) a search of records and existing data to establish fair market value; (b) an exploratory program to establish fair market value of the minerals; and (c) an evaluation of an exploratory program performed by the applicant.

The Minerals Management Service (MMS) 5/ submitted its report on February 12, 1982. Since it determined that leasable mineral value was present, MMS provided the fair market value of the minerals on a tract by tract basis. MMS performed a comparative sales analysis using previous lease sale data and published information to arrive at fair market value.

The MMS report stated:

Tract number one contains 85.37 acres located in the E 1/2 NW 1/4, sec. 4, T. 5 N., R. 31 W. According to I.C. 20-K, Arkansas Geological Commission, this tract lies outside of the known occurrence of economically recoverable coal. An oil and gas lease was sold for this tract on September 14, 1978, for \$105.44 per acre. A lease, number ES-19868, was awarded on March 1, 1979,

---

2/ The land covered by this application is all located in the Fifth Principal meridian, Sebastian County, Arkansas, and is described as follows: E 1/2 NW 1/4, sec. 4, T. 5 N., R. 31 W.; NE 1/4 NE 1/4, sec. 19, T. 6 N., R. 29 W.; frl. N 1/2, N 1/2 frl. S 1/2, sec. 12, T. 4 N., R. 33 W.; NE 1/4 SE 1/4, sec. 27, T. 6 N., R. 30 W.; NW 1/4 SW 1/4, sec. 7, T. 4 N., R. 32 W.

3/ The Federal mineral interest consists of all the oil and gas rights in the subject land. It also consists of all of the coal rights in those lands except the NE 1/4 NE 1/4 of sec. 19, T. 6 N., R. 29 W., and the NE 1/4 SE 1/4, sec. 27, T. 6 N., R. 30 W., where the patent was issued "subject to the rights of prior permittees or lessees to use so much of the surface of said lands as is required for mining operations, without compensation to the patentee for damages resulting from proper mining operations."

4/ Appellants acquired the surface ownership in the subject land by warranty deeds dated Dec. 31, 1969, and Dec. 12, 1972. Their grantors acquired the surface ownership from the United States in patent 1151238 dated Apr. 4, 1955, and patent 1155734 dated Nov. 22, 1955.

5/ By Secretarial Order No. 3071 published in the Federal Register on Feb. 2, 1982, 47 FR 4751, the Secretary created the MMS to, inter alia, take over the functions of the Conservation Division, Geological Survey.

and as of this date, is still in force. The rights to the oil and gas under this tract will not be available for sale until this lease is terminated.

Tract number two contains some 40 acres located in the NE 1/4 NE 1/2, sec. 19, T. 6 N., R. 29 W. On January 22, 1981, 24 tracts in this township sold for between \$1,600 and \$2,626 per acre for Federal oil and gas leases. The FMV of the oil and gas for this tract is \$1,600 per acre or approximately \$64,000 total.

Tract number three contains some 116.73 acres located in the N 1/2 and N 1/2 S 1/2, sec. 12, T. 4 N., R. 33 W. According to I.C. 20-K, Arkansas Geological Commission, this tract lies inside the known occurrence of the Lower Hartshorne Coal Bed. However, the coal lies beneath 1,000 to 2,000 feet of overburden and about 3 miles from the nearest outcrop. Hence it is not recoverable by current mining methods, and the FMV is a nominal \$25 per acre. Based on the sale of tract number one, the FMV of the oil and gas is \$125 per acre, giving a total of \$150 per acre or about \$17,510 total.

Tract four contains some 40 acres located in the NE 1/4 SE 1/4, sec. 27, T. 6 N., R. 30 W. On January 22, 1981, six tracts in this township sold for between \$1,400 and \$2,121 per acre for Federal oil and gas leases. The FMV of the oil and gas for this tract is \$1,600 per acre or approximately \$64,000 total.

Tract number five contains some 40 acres located in the NW 1/4 SW 1/4, sec. 7, T. 4 N., R. 32 W. This tract is adjacent to tract number three and the same analysis gives a FMV of \$150 per acre or about \$6,000 total.

The BLM decision rejecting the application states that the application fails to meet the requirements of section 209(b)(1) of FLPMA, 43 U.S.C. § 1719(b) (1976), for the following reasons:

The Minerals Management Service reports that the above tracts have known mineral values, ranging from \$105.44 per acre to \$1,600 per acre. Therefore, the application does not meet the first requirement that there be no known mineral values in the land.

The application fails to demonstrate 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.

The subject land is presently used for grazing or is laying fallow. However, the application speculates that the property has potential for homesites, mini-ranches, or timber production.

It also contains a statement that, "\* \* \* Should mineral activities -- gas or oil -- take place reasonably close to this property, I am placed in a position of having little or no say in the potential harmful effects to our surface rights because the mineral rights are not ours to negotiate \* \* \*." Assuming, arguendo, the validity of both these propositions, it does not compel a determination that the present mineral reservation is interfering with or precluding appropriate nonmineral development and that such development is a more beneficial use of the land than mineral development. The applicable statute and regulations contemplate more immediate interference with appropriate nonmineral development, together with a showing as to how the surface use is a more beneficial use of the land. (See David D. Plater, 55 IBLA 296, June 26, 1981)

[1] Section 209(b)(1) of FLPMA, 43 U.S.C. § 1719(b)(1) (1976), provides:

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 nonmineral development of the land and that such development is a more beneficial use of the land than mineral development.

The term "known mineral values" is defined in 43 CFR 2720.0-5(b) as "mineral values in lands with underlying geologic formations which are valuable for prospecting for, developing or producing natural mineral deposits. The presence of such mineral deposits in the lands may be known, or geologic conditions may be such as to make the lands prospectively valuable for mineral occurrence."

Under this provision, the Secretary is authorized to convey reserved Federal mineral interests to the owner of the surface estate only where either or both of two specified conditions exist. Absent a finding of the existence of one of these conditions, an application must be rejected. <sup>6/</sup> See San Patricio County, 61 IBLA 80 (1981); David D. Plater, supra; 43 CFR 2720.0-2.

---

<sup>6/</sup> An applicant for conveyance of a mineral interest may not be entitled to conveyance even when either or both of the conditions in section 209(b)(1) of FLPMA are satisfied. The language of this portion of the statute is discretionary, and entitles the Secretary or his designated representative to reject an application upon a determination supported by facts of record that conveyance of the mineral interest would not be in the public interest. See Basin Electric Power Corp., 50 IBLA 197 (1980).

BLM, in its August 13, 1982, decision found that neither of the specified conditions exist in this case. Appellants, however, disagree. They contend that two of the tracts 7/ have no known mineral values and argue that the BLM decision was arbitrary and capricious. In support of this contention, appellants note that the BLM decision does not (1) identify a separate value of each of the five parcels of property contained in the application, (2) recite the method in which the values were obtained on each parcel, (3) recite whether the land is classified as a "known geological structure."

This Board has consistently stated that BLM may reject an application where BLM's determination is supported by facts of record. Dean A. Clark, 53 IBLA 362 (1981). The BLM decision, with regard to the mineral values of the subject land, is specifically based on the MMS report, which is part of the record. The MMS report, quoted extensively herein, identifies a separate value for each of the parcels, explains how the values were obtained, and notes whether the parcels are part of or adjacent to known geological structures. As this Board has stated on many occasions, the Secretary is entitled to rely on MMS, the Secretary's technical expert 8/, in matters concerning geologic evaluation of tracts of land. David D. Plater, *supra*; Dean A. Clark, *supra*, and cases cited therein.

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 David D. Plater, *supra*. In the absence of a clear and definite showing of error, we will not disturb BLM's determination. Donnie R. Clouse, 51 IBLA 221 (1980); The Kemmerer Coal Co., 26 IBLA 127 (1976).

Appellants allege that there are no known mineral values in two of the parcels. They present no evidence to support their allegation. A mere allegation does not establish that two parcels of the subject land do not contain 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:

Gail M. Frazier Edward W. Stuebing  
Administrative Judge

Administrative Judge

---

7/ Those parcels are identified by appellants as being located in sec. 12, T. 4 N., R. 33 W. and sec. 7, T. 4 N., R. 32 W., Sebastian County, Arkansas.

8/ Secretarial Order No. 3087, dated Dec. 3, 1982, consolidated the onshore mineral leasing functions of the MMS within the BLM. 48 FR 8982 (Mar. 2, 1983). Although this order was further amended, the amendment is not relevant to this discussion.

