

Appeal from decision of California State Office, Bureau of Land Management, rejecting application for conveyance of federally owned mineral interest. CA-12996.

Affirmed.

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

BLM may properly reject an application for conveyance of a federally owned 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) (1982), where the applicant has not rebutted the conclusion that the land is prospectively valuable for oil and gas and has not shown that oil and gas development is interfering with or precluding the production of pecans, and that the latter use is a more beneficial use of the land than mineral development.

APPEARANCES: Jerry R. Schuster, pro se and for Sonia A. Schuster.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Jerry R. Schuster and Sonia A. Schuster have appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated May 24, 1984, vacating an earlier decision and rejecting their application for conveyance of the federally owned mineral interest in 40 acres of land situated in the E 1/2 W 1/2 SW 1/4 sec. 20, T. 31 S., R. 24 E., Mount Diablo Meridian, Kern County, California.

Appellants' application was filed on July 30, 1982, pursuant to section 209(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1719(b) (1982). Appellants are the owners of the surface estate. The patent to the lands, issued March 12, 1920, reserved "to the United States all the oil and gas in the lands so patented" together with the right to prospect for, mine, and remove such deposits. In its May 1984 decision, BLM rejected appellants' application for conveyance of the reserved mineral interest because the "land is within the boundaries of the Buena Vista Hills Known Geologic Structure [KGS] and within producing oil and gas lease

Sacramento 019284(A)" and because BLM had determined that "the land has more value for oil and gas production * * * than for sale." 1/

In their statement of reasons for appeal, appellants contend that the land has "no value" for oil and gas based on appellants' belief that the land only has abandoned wells which were "produced to depletion" and the only producing wells are located a mile away and are "marginal stripper wells." Appellants state that the KGS determination should be "reviewed." In their application for conveyance, appellants asserted that they were in the process of planting the land with pecan trees and that they wished to obtain the mineral estate in order to "protect" their orchard from oil and gas development. In addition, appellants asserted that the production of pecans would be "more beneficial to the land than one abandoned oil well."

[1] Section 209(b)(1) of FLPMA, 43 U.S.C. § 1719(b)(1) (1982), provides that the Secretary may convey a federally owned mineral interest, where the surface is in non-Federal ownership, only

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.

Absent a finding that one of the specified conditions exists, an application for conveyance must be rejected. Denman Investment Corp., 78 IBLA 311 (1984).

In a memorandum dated February 27, 1984, the Deputy State Director, Mineral Resources, informed the Chief, Branch of Lands and Minerals Operations, that the subject land is "currently" within the Buena Vista Hills KGS. At the very least, this designation means that the land is considered to be "presumptively productive" of oil or gas. 43 CFR 3100.0-5(1). In addition, in a memorandum dated December 28, 1982, the Minerals Manager, Western Region, notified the Chief, Branch of Lands and Minerals Operations, that the land was classified at that time as "prospectively valuable" for oil and gas and that it was valued at \$25 per acre. The record does not contain an updated appraisal of the value of the land for oil and gas. However, we may presume that it is greater than \$25 per acre in view of the fact that the land has been designated as being within a KGS. In any case, the record supports a conclusion that the land has "known mineral values." 2/

1/ In its Mar. 30, 1984, decision, which was subsequently vacated, BLM similarly rejected appellants' application citing the fact that the land has "value" for oil and gas and that appellants had not provided sufficient evidence that retention of the mineral interest interferes with appellants' present or future use of the land. The March 1984 decision was vacated by the May 1984 decision because there was no proof that the March decision had been served on appellants.

2/ The term "known mineral values" includes the situation where "geologic conditions [are] such as to make the lands prospectively valuable for mineral occurrence." 43 CFR 2720.0-5(b).

Inclusion of land in a KGS does not mean that the land itself is currently producing or has been determined to be productive of oil or gas. Land, as noted above, may be included in a KGS because of geological indicia indicating that a producing oil and gas deposit extends under the land such that the land is considered to be "presumptively productive." 43 CFR 3100.0-5(1); see, e.g., Robert G. Lynn, 61 IBLA 153 (1982). The record indicates, and appellants admit, that there is oil and gas production in the vicinity of the subject land. By virtue of the KGS determination, BLM has determined that this producing deposit extends under the subject land, despite the presence of any abandoned wells therein. Appellants have not carried their burden of showing that the KGS determination was in error. Stephen M. Naslund, 79 IBLA 252 (1984). Moreover, appellants have not presented sufficient evidence that the land has no "known mineral values," as that term is defined in 43 CFR 2720.0-5(b), such that they satisfy the first condition for a section 209(b) conveyance. See Robert Gattis, 73 IBLA 92 (1983); John G. Hafernack, 69 IBLA 118 (1982).

In its May 1984 decision, BLM also held that the subject land has "more value" for the production of oil and gas than for sale to appellants. In their application, appellants stated that the land would be developed as an orchard for the production of pecans. However, appellants have presented no evidence that the reservation of mineral rights is interfering with or precluding his nonmineral development or that his nonmineral development of the subject land is a more beneficial use of the land than mineral development. In such circumstances, we must hold that appellants have not satisfied the second basis for a section 209(b) conveyance. See John G. Hafernack, *supra*; San Patricio County, 61 IBLA 80 (1981); David D. Plater, 55 IBLA 296 (1981).

Therefore, we conclude that BLM properly rejected appellants' application for conveyance of a federally owned mineral interest.

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.

R. W. Mullen
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

Edward W. Stuebing
Administrative Judge