

TEMBLOR ENTERPRISES, INC.

IBLA 85-45

Decided April 25, 1985

Appeal from a decision of the California State Office, Bureau of Land Management, rejecting an application for conveyance of federally owned mineral interest. CA 12233.

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) (1982), 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: Steve W. Nichols, Esq., Bakersfield, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Temblor Enterprises, Inc., has appealed a decision of the California State Office, Bureau of Land Management (BLM), dated September 4, 1984, which rejected in part an application for conveyance of federally owned mineral interests.

On January 21, 1982, appellant filed application CA 12233 pursuant to section 209(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1719(b) (1982), which provides for conveyance of the federally owned mineral interest in land. 1/

1/ The lands for which appellant filed are described in the decision, as follows:
"Mount Diablo Meridian
T. 30 S., R. 20 S.,
Sec. 2, SE 1/4 SW 1/4, SW 1/4 SE 1/4;

The September 4, 1984, decision, which is the subject of this appeal, states:

The mineral report prepared for this application states that the land is prospectively valuable for oil and gas and is or has been under lease. The report further recommends that all of the oil and gas interest in the land be retained by the United States. The land is adjacent to the Temblor Hills undefined known geologic structure and two unit areas known as the Hotchiss and the Northwest Belgian Anticline.

The application states and the mineral report supports that the land is used for agriculture. But the application does not show that the possible development of the oil and gas potential of this land by the United States will interfere with the agricultural use or that agricultural use is a more beneficial use of the land than mineral development.

* * * * *

The mineral report further states that locatable, saleable and the remaining leasable (exception of oil and gas) minerals may be conveyed to the applicant if all other requirements are met. Should the applicant not exercise the right of appeal stated below resulting from the rejection of the conveyance of the oil and gas interest, this application will continue to be processed as to the conveyance of the locatable, saleable and remaining leasable (except oil and gas) minerals at the conclusion of the appeals period.

In the statement of reasons for appeal, appellant contends that reservation of 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. Appellant states that substantial portions of the land are commercially ranched and require extensive financing to meet "farming obligations." Appellant notes that financial institutions are concerned that mineral rights are not in the surface owner because oil and gas exploration hinders and "in many instances

fn. 1 (continued)

- Sec. 10, S 1/2;
 - Sec. 11, N 1/2 NE 1/4, NW 1/4, S 1/2;
 - Sec. 14, NW 1/4 NE 1/4, S 1/2 NE 1/4, NW 1/4, S 1/2;
 - Sec. 15, N 1/2, N 1/2 S 1/2, SW 1/4 SW 1/4, SE 1/4 SE 1/4;
 - Sec. 21, NE 1/4, N 1/2 SE 1/4;
 - Sec. 22, NE 1/4 NE 1/4, S 1/2 NE 1/4, NW 1/4 NW 1/4, S 1/2 NW 1/4, N 1/2 SW 1/4, SE 1/4 SW 1/4, SE 1/4;
 - Sec. 23, All;
 - Sec. 26, NW 1/4;
 - Sec. 27, NE 1/4, NE 1/4 NW 1/4, S 1/2 NW 1/4;
- containing 3,960 acres."

prohibits" farming. With mineral rights being held by third party lessees, appellant argues that it has no authority to dictate the where, when, and extent of oil and gas exploration.

In addition to its farming activities, appellant is desirous of maintaining a game preserve for large mammals in remote, nonfarmed areas of the property. Appellant further states that the area is a "known California condor habitat." Appellant contends that oil and gas exploration in the area has curtailed sightings of condors, which are an endangered species. Appellant notes, however, that the introduction of large mammals on the projected game reserve will help the condors since the birds are carrion feeders and would be benefitted by the natural death of the mammals. Appellant contends that continued oil and gas exploration would hinder development of a game preserve and adversely affect condor preservation due to the effect men and machinery would have upon wild animals. Appellant notes that the lands in question are within the only remaining known condor habitat.

Appellant contends that there are no known mineral values in the land. In support of this contention, appellant notes that the application was rejected in part as to the oil and gas interests, but not as to other mineral interests. Appellant states that:

The applicant is aware of thirteen (13) test wells having been drilled in the area adjacent to or on the real property to which this application pertains, however, every well drilled resulted in no minerals (oil and gas) being found. Regardless of the present leases on the real property, the test results of the parties exploring for oil and gas overwhelmingly indicate that there are no known mineral values in the land. Sufficient records of the well results are available to the BLM for a determination that there are no known mineral values in the land. If there exists any evidence that there is oil and gas present on the real property the BLM would be aware of such results and could reject this application on this basis[;] however, without evidence that there is oil and gas present, the only conclusion that can be made is that no known mineral values exist and the applicant must be granted the mineral interests. To do otherwise would be arbitrary capricious and an abuse of discretion.

[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).

This Board has consistently stated that BLM may reject an application for conveyance of mineral interests where BLM's determination is supported by facts of record. The Secretary is entitled to rely on BLM, the Secretary's technical expert, in matters concerning geologic evaluation of tracts of land. The burden is on appellant to present a persuasive argument to rebut BLM's determination that the subject land has mineral values. In the absence of a showing of error, we will not disturb BLM's determination. Denman Investment Corp., supra at 314.

A known mineral value determination report was prepared by BLM in the course of processing the application. It was found that of the total acreage, all but four isolated tracts were subject to outstanding oil and gas leases. 2/ The existence of these leases would at the least impede transfer of the ownership of oil and gas to appellant. A successful well, drilled pursuant to the lease would, of course, preclude transfer. The remaining lands, comprising approximately 240 acres in the aggregate, are not presently subject to a lease. The BLM conclusion was that these tracts were prospectively valuable for oil and gas. The evidence of leases on the tract and other information in the file, including a report of the limited depth to which the early wells were drilled, is sufficient to support the conclusion reached by BLM. Appellant's evidence is not found to be sufficient to rebut the determination and appellant has not shown error. The evidence regarding the result of drilling on or near the tract presented by appellant was considered at the time of the determination and, in light of the evidence as to drilling depth and results, this evidence also supports BLM's position. We find no error in BLM's determination that the land contains known mineral (oil and gas) values. Therefore a conveyance can be authorized only upon a showing that the reservation of minerals (oil and gas) interferes with or precludes nonmineral development and that such nonmineral development would be more beneficial than mineral development. Mr. and Mrs. E. J. Wright, 83 IBLA 92, 94 (1984).

The application filed by appellant states that "[t]he existing and proposed uses of the land are for livestock production, grazing and agricultural production of wheat, safflower and oats." In its application appellant states:

(iii) The reservation of the mineral interests in the United States interferes with the financing and operation of the ranch in that lending institutions have not agreed to provide sufficient operating capital due to the mineral rights being owned by someone other than the fee owner. For financing in amounts sufficient for continued operation the banks have stated that the security of the land is lessened by the fact that ranching operations could be interfered with by mining or by other mineral extraction. To borrow greater amounts the banks have requested

2/ Sec. 14, NW 1/4 NE 1/4; sec. 15, NE 1/4 NE 1/4; sec. 27, SE 1/4 NE 1/4, E 1/2 NW 1/4; SW 1/4 SW 1/4, T. 30 S., R. 20 E., Mount Diablo Meridian, are the only portions of the tract under application not subject to oil and gas leases.

that Temblor Enterprises, Inc., apply for and receive the mineral interests to avoid potential conflicts or loss of the security value of the land.

On appeal appellant states that its failure to have control of the mineral estate is of concern to financial institutions and "in many instances prohibits" farming. The BLM report states that a field examination revealed no agriculture activities on the land. The report continues at page 4:

Oil and gas activity does not require exclusive use of the surface. Each well pad requires roughly one acre of land, and only the area in the immediate vicinity of the well is cemented. Well drilling and pumper installation will cause temporary surface disturbance which can be reclaimed to the surface owner's satisfaction. Ranching and farming successfully coexist with oil and gas development throughout the Temblor Range; thus, it has been demonstrated that such development does not directly interfere with the applicant's proposed surface use. The applicant further states that the threat of mineral development interferes with the financing of his operation since the banks feel that such development would be in conflict with the proposed uses. As previously discussed, for oil and gas development, this is not the case. Since both land uses can exist together in this area, there is no purpose served in discussing which is most beneficial. Even if the land were not already under lease, retention of the oil and gas mineral interests would be recommended.

Appellant's argument regarding the effect of the severance of the surface from the mineral estate on its ability to obtain financing is not convincing. We do not question the truth of the statement but find that the coexistence of oil and gas extraction and ranching in the Temblor Range and in states such as Texas clearly demonstrates that the existence of oil and gas wells on ranchland does not unduly interfere with ranching operations.

On appeal appellant raises the possibility of establishing a game preserve on certain undefined areas of the subject land. Appellant alleges that such areas are known California condor habitat and that establishment of such a preserve will benefit the condors.

We note that appellant did not inform BLM of its proposed use of parts of the land for a game preserve so that BLM could judge whether such a use would be more beneficial than mineral development. We need not remand for BLM's consideration, however, since appellant has failed to establish that the mineral reservation would interfere with or preclude such a use. In addition, appellant has failed to show that a game preserve is a more beneficial use of the land than mineral development. While appellant's concern for California condor habitat is laudable, mineral exploration is not necessarily inconsistent with preservation of that habitat since the Secretary of the Interior has discretionary authority to issue oil and gas leases and condition the issuance of such leases upon the acceptance of special stipulations designed to protect rare and endangered species and the environment, e.g., Bill J. Maddox, 72 IBLA 22 (1983).

Accordingly, BLM properly rejected appellant's 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.

R. W. Mullen

Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Wm. Philip Horton
Chief Administrative Judge.

