

KENNETH C. PIXLEY

IBLA 85-346

Decided September 13, 1985

Appeal from a decision of the Tulsa, Oklahoma, District Office, Bureau of Land Management, rejecting application for conveyance of federally owned mineral interests, NM-54608(OK).

Affirmed.

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

An application for conveyance of mineral interests to the owner of the surface estate pursuant to 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.

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

Because the definition of "known mineral values" at 43 CFR 2730.0-5(b) includes prospective value, absence of current mineral production provides no basis for concluding that land has no known mineral values in adjudicating an application for conveyance of federally owned mineral interests pursuant to 43 U.S.C. § 1719(b) (1982).

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

An application for conveyance of a federally owned mineral interest is properly rejected if the applicant fails to provide, pursuant to 43 CFR 2720.1-2(d)(4), as complete a statement as possible concerning (i) the nature of federally-reserved or owned mineral values in the land, including explanatory information, (ii) the

existing and proposed uses of the land, (iii) why the reservation of the mineral interests in the United States is interfering with or precluding appropriate non-mineral development of the land covered by the application, (iv) how and why such development would be a more beneficial use of the land than its mineral development, and (v) a showing that the proposed use complies or will comply with State and local zoning and/or planning requirements.

APPEARANCES: Kenneth C. Pixley, pro se.

#### OPINION BY ADMINISTRATIVE JUDGE MULLEN

Kenneth C. Pixley has appealed from the December 18, 1984, decision of the Tulsa, Oklahoma, District Office, Bureau of Land Management (BLM), rejecting his application for conveyance of federally owned mineral interests for seven parcels of land patented to him in 1966 and 1967, pursuant to 30 U.S.C. §§ 121-123 (1982), or 30 U.S.C. § 124 (1982).

[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 non-mineral 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. Temblor Enterprises, Inc., 86 IBLA 175, 177 (1985); Denman Investment Corp., 78 IBLA 311 (1984).

BLM rejected appellant's application because the lands had known mineral values, and because appellant had failed to show that the reserved mineral interests interfered with or precluded nonmineral development of the land. This decision was based on a mineral report contained in a memorandum dated November 28, 1984. The mineral report concluded:

A review was made of all the published and unpublished data available in the Tulsa District Office files that relate to these lands. All of the above tracts have known mineral value in that they are classified prospectively valuable for oil and gas. Other minerals, such as gypsum, salt (sodium), copper, and sand/gravel may be present on some of these tracts, but their value, if any, is unknown. A field check at the present time is not deemed necessary.

The drilling and development of oil and gas should not significantly interfere with the agriculture use of the subject tracts. Therefore, the reservation of Federal minerals under

these tracts is not deemed a deterrent to their surface use. We recommend that Application NM-54608(OK) be rejected and that the Federal mineral rights be retained.

Appellant asserts that he owns all of the minerals other than oil and gas and that he knows of no oil or gas production in the area. It is true that under 30 U.S.C. § 122 (1982), the United States reserved only the oil and gas for five of the seven parcels with which this application is concerned. However, patents conveying the other two parcels reserved potash and sodium in addition to oil and gas. Appellant is correct in contending he owns all minerals other than those expressly reserved.

[2] Appellant disagrees with BLM's decision "that this land has known mineral values, since there is no production of oil or gas within any distance of this property" (Notice of Appeal). The term "known mineral values" is defined by Departmental regulation 43 CFR 2720.0-5(b) as follows:

"Known mineral values" means 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.

The land at issue had been determined to be prospectively valuable for the reserved minerals when the patents were issued to appellant. Because the definition includes prospective value, absence of current production provides no basis for concluding that the land has no known mineral value.

If such values do exist, appellant contends that development of those values would interfere with development of the surface. Appellant states that if the land is valuable for minerals, he would like to know the value so that the minerals could be purchased.

[3] Because appellant's land contains known mineral values within the meaning of the regulation, the only basis for granting appellant's application would be that the reservation of the mineral rights interferes with or precludes appropriate nonmineral development of the land and that such development is more beneficial than mineral development. In this regard, an applicant is required by 43 CFR 2720.1-2(d)(4) to submit:

As complete a statement as possible concerning (i) the nature of federally-reserved or owned mineral values in the land, including explanatory information, (ii) the existing and proposed uses of the land, (iii) why the reservation of the mineral interests in the United States is interfering with or precluding appropriate non-mineral development of the land covered by the application, (iv) how and why such development would be a more beneficial use of the land than its mineral development, and (v) a showing that the proposed use complies or will comply with State and local zoning and/or planning requirements.

By letter dated January 6, 1983, BLM advised appellant he must submit the required statement. However, no response was received. BLM therefore properly rejected appellant's application. 1/

Although appellant would like to know the value of the mineral estate, no determination is made until a complete application is received, and the applicant must bear the costs of making such a determination. See 43 CFR 2720.3.

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:

James L. Burski  
Administrative Judge

Will A. Irwin  
Administrative Judge

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1/ In his letter dated July 25, 1981, appellant states that the Government reserved the right to mine the properties without compensation for damages resulting from the mining operations, and that it would impractical to develop the property without some right to compensation. However, the mineral reservations in all of these conveyances, including those made pursuant to 30 U.S.C. § 124 (1982), are subject to the provisions of 30 U.S.C. § 122 (1982), which provide for payment of damages to crops and improvements by reason of prospecting as well as for damages caused by mining.

