

Appeal from a decision of the California State Office, Bureau of Land Management, rejecting application for conveyance of mineral interest. CA 13459.

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) there are no known mineral values in the land, or (2) 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

Where, in adjudicating an application filed pursuant to sec. 209(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1719(b) (1982), seeking conveyance of the retained oil and gas interest, BLM makes a determination that the land has known mineral value in that it is prospectively valuable for oil and gas, such determination being based on the fact that the land is in an area of oil and gas drilling activity and is subject to an outstanding Federal oil and gas lease, that determination will not be overcome by a mere allegation that there are no known mineral values in the land.

APPEARANCES: M. G. Bultman, Esq., Bakersfield, California, for appellants.

## OPINION BY ADMINISTRATIVE JUDGE HARRIS

Richard L. Dickard, Sr., et al. 1/ appeal from a decision of the California State Office, Bureau of Land Management (BLM), dated July 6, 1984, rejecting their application, CA 13459, filed pursuant to section 209(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1719(b) (1982), for the conveyance of the mineral interest owned by the United States. 2/

Section 209(b)(1) of FLPMA 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, 3/ 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.

43 U.S.C. § 1719(b)(1) (1982). See also 43 CFR 2720.0-2.

BLM rejected the application because it failed to meet the requirements of section 209(b)(1) of FLPMA, supra. BLM noted that the land is within existing oil and gas lease CA 12831, issued effective December 1, 1982, for a 10-year period. BLM concluded that oil and gas development will not interfere with the intended agricultural surface use and that the land has more value for oil and gas production.

Appellants are the record owners of the surface of the land in issue. The United States issued patent number 823004 for this land on September 17, 1921, which reserved "to the United States all oil and gas in the lands so patented, and to it, or persons authorized by it, the right to prospect for, mine, and remove such deposits from the same upon compliance with the conditions of and subject to the provisions and limitations of the Act of July 17, 1914 (38 Stat. 509)." 4/

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1/ The other appellants are Helen D. Dickard, Richard L. Dickard, Jr., and Sammy Lori Dickard.

2/ Appellants applied for 2 parcels of land containing 78.34 acres located in the W1/2 NW1/4 and the NW1/4 SW1/4 of sec. 34, T. 29 S., R. 23 E., Mount Diablo Meridian, Kern County, California.

3/ The regulations define "known mineral values" 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." 43 CFR 2720.0-5(b).

4/ The Act of July 17, 1914, 30 U.S.C. § 121 (1982), provides for agricultural entry of lands withdrawn, classified, or reported as containing phosphate, nitrate, potash, oil, gas, or asphaltic minerals.

While in their application appellants stated it was their intent "to clear and level the land and use it for light farming," in their statement of reasons they now allege that the land in issue is potentially residential land which is not suitable for farming without considerable improvements. Appellants explain that the land is located about 2 miles from the city of Buttonwillow, California, which is currently undergoing considerable growth and development. Appellants note that a factory is now under construction in the area which will increase the need for residential housing. According to appellants, the most beneficial use of the land is for residential housing and construction of such housing will be hampered unless the surface owners can acquire the mineral rights underlying the land.

Appellants also contend that at the present time there are no known mineral values in the land, and the reservation of mineral rights in the United States is interfering with and precluding appropriate nonmineral development.

[1] Under the language of section 209(b)(1) of FLPMA, *supra*, the Secretary is authorized to convey reserved Federal mineral interests to the owner of the surface estate if either of two specified conditions exist. Absent a finding of the existence of one of these conditions, an application must be rejected. Denman Investment Corp., 78 IBLA 311 (1984); Robert Gattis, 73 IBLA 92 (1983), and cases cited therein.

Regarding the mineral value of the land, BLM's decision was essentially based on a report from the Assistant District Manager, Minerals, to the District Manager, Bakersfield, dated June 7, 1984, which states in pertinent part as follows:

Although the subject parcels are not in a Known Geologic Structure (KGS) the subject area is classified as prospectively valuable for oil and gas by the Bureau. Any oil and gas development will not interfere with the intended surface use, agriculture (as indicated by the applicant in his statement filed with his application pursuant to 43 CFR 2720.1-2(d)(4)), since the requirements for mineral entry on the subject land pursuant to the Act of 1914 require compensation to the surface owner for damages to crops and improvements by the mineral entryman (43 CFR 3813.1), and agricultural use is considered a temporary use of the surface.

It is the recommendation of my staff that the oil and gas reservation on the subject parcels identified in mineral conveyance application CA 13459 would best serve the public interest in public ownership, and that since the subject parcels are encumbered by a federal oil and gas lease, the Bureau does not have any interest to convey at this time.

Because of the special limitations placed on the Bureau for conveyance of the mineral interest in this case, my staff feels that this memorandum is adequate documentation for denial of the conveyance, and a formal mineral report will not be required.

[2] Appellants allege that at the present time there are no known mineral values in the land. BLM, however, in its report concluded that the land was prospectively valuable for oil and gas. Accompanying the report is a map showing oil and gas drilling activity in the vicinity of the land in question. In addition, the land is currently under lease for oil and gas. The burden is on appellant to present a convincing and persuasive argument to rebut BLM's determination that the subject land has mineral values. See David D. Plater, 55 IBLA 296 (1981). In the absence of a clear and definite showing of error, we will not disturb BLM's determination. Denman Investment Corp., *supra*; Robert Gattis, *supra*; Donnie R. Clouse, 51 IBLA 221 (1980). A mere allegation by appellant that no known minerals exist is not sufficient to rebut BLM's determination. See Robert Gattis, *supra* at 96.

BLM's report was prepared based on the assumption that appellants' intended use was light farming, as indicated in the application. Appellants now claim residential development is the desired use. We need not remand for BLM's consideration, however, since appellants have failed to establish that the mineral reservation would interfere with or preclude either type of use. Likewise, although they have alleged an increased need for housing, they have offered no proof in support of that allegation or any evidence that residential housing would serve a more beneficial purpose than oil and gas development. See Temblor Enterprises, Inc., 86 IBLA 175, 179 (1985). In such circumstances we must hold that appellants have not satisfied the second basis for a section 209(b) conveyance. See Jerry R. Schuster, 83 IBLA 326 (1984); see also John G. Hafernick, 69 IBLA 118 (1982); San Patricio County, 61 IBLA 80 (1981); David D. Plater, *supra*.

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. 5/

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Bruce R. Harris  
Administrative Judge

We concur:

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C. Randall Grant, Jr.  
Administrative Judge

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James L. Burski  
Administrative Judge

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5/ BLM should determine the actual cost of processing appellants' application and return any unexpended portion of the \$ 800 submitted by appellants.

