

WAYNE D. KLUMP ET AL.

IBLA 86-1636 through 1639

Decided September 6, 1988

Consolidated appeals from decisions by the Safford, Arizona, District Office, Bureau of Land Management, rejecting applications for conveyance of Federally owned mineral interests. A 021817, A 021818, A 021820, and A 021822.

Set aside and remanded.

1. Administrative Procedure: Generally -- Administrative Procedure: Administrative Record -- Federal Land Policy and Management Act of 1976: Reservation and Conveyance of Mineral Interests

A decision rejecting an application for conveyance of Federally owned mineral interests under sec. 209(b) of FLPMA because of a finding that the lands applied for have "known mineral values" must be supported by facts of record. If the finding is based solely on an uncorroborated, conclusory memorandum, the decision will be set aside and the matter remanded for readjudication.

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

When an application for conveyance of a Federally owned mineral interest fails initially to adequately specify why the reservation of mineral interests is interfering with or precluding appropriate nonmineral development of the lands applied for, or how and why such nonmineral development would be a more beneficial use of these lands than mineral development, such failure does not subject the application to automatic rejection. Rather, if BLM determines that the lands applied for possess "known mineral values," BLM should then provide the applicant with an opportunity to make a showing of interference with existing uses, as contemplated by 43 CFR 2720.1-1(a)(2) and 2720.1-2(d)(4).

APPEARANCES: Wayne D. Klump, et al., pro sese.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

By four decisions dated August 19, 1986, the Safford, Arizona, District Office, Bureau of Land Management (BLM), rejected applications by Wayne D. Klump, et al. (the Klumps), for conveyance of retained Federal mineral interests in four groups of patented lands. 1/ The Klumps appealed each of these four decisions, and the appeals have been consolidated for review.

BLM's decisions rejected the applications for two reasons, quoted as follows:

1. The subject lands have been determined to be "prospectively valuable for mineral deposits." [43 CFR 2720.1-1(a)(1).]

2. The owner of record has failed to show that the reservation of the mineral estate in the United States precludes appropriate non-mineral development of the land or that such development would be a more beneficial use. [43 CFR 2720.1-1(a)(2). 2/]

Having failed to meet the criteria established under Section 209(b)(1) and (b)(3)(i) of the Federal Land Policy and Management Act of October 21, 1976 [(FLPMA), 43 U.S.C. §§ 1719(b)(1) and (b)(3)(i) (1982)], we must reject the conveyance application.

The sole basis appearing in the record for BLM's determination that the lands are "prospectively valuable for mineral deposits" is a memorandum from the Safford District Office's Mining Engineer, which provides in full:

The lands contained in this application are valuable for prospecting and, therefore, have known mineral values as defined in 43 CFR 2720.0-5(b).

There are numerous mineral occurrences throughout the entire Dos Cabezas Mountain Range, which makes up the Dos Cabezas-Teviston Mining District that these lands lie within. As stated in the Arizona Bureau of Mines Bulletin 187, "However, the widely scattered and varied mineralization, and favorable geologic formations and structures suggests [sic] that possibilities still exist in the area for large, low grade, disseminated copper deposits. \* \* \* A careful geological examination of the two districts for hidden deposits is definitely warranted."

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1/ The cases on appeal are as follows: Wayne D. Klump, IBLA 86-1636 (A-21817); John D. Klump, IBLA 86-1637 (A-21818); John L. Klump, IBLA 86-1638 (A-21820); and Luther W. Klump, IBLA 86-1639 (A-21822).

2/ BLM's decision cited these provisions as codified prior to amendment in March 1986, when they were redesignated without alteration. This decision cites to the sections as redesignated.

In addition, there are several prospects and past producers in the vicinity of the parcels under application.

Since the lands are valuable for prospecting, and the applicant has not shown that the reservation of minerals is interfering with his use of the surface, I recommend that the application be rejected.

Apart from this memorandum, the case records are utterly devoid of any evidence concerning the mineral values on the subject parcels. The Klumps allege on appeal that "there exists no value whatsoever in the mineral interests underlying" the lands covered by their applications.

[1] The memorandum cited by BLM does not provide an adequate factual basis from which to determine that the lands applied for have "known mineral values," as defined by 43 CFR 2720.0-5(b). The memorandum refers to "several prospects and past producers in the vicinity of the parcels," but does not identify them or provide any details regarding the minerals found or produced. It asserts that there are "numerous mineral occurrences in the Dos Cabezas-Teviston Mining District," but does not identify or describe these occurrences or provide supporting evidence, such as geologic maps, mineral reports, etc. The quotation from the Arizona Bureau of Mines bulletin is so brief that we are unable to determine its applicability to the lands in question, and there is no indication that BLM made any effort to corroborate any applicable findings set out in the bulletin.

In sum, this scanty, conclusory memorandum falls short of the evidence required to establish that the four parcels at issue possess "known mineral values." While BLM is not required in every case to do an on-the-ground evaluation of parcels to determine whether they have "known mineral values," <sup>3/</sup> and while the burden of disproving BLM's determination as to the mineral values rests with the applicant, <sup>4/</sup> BLM is not absolved from its obligation to make this determination in the first instance on the basis of facts of record. Absent a record supporting the agency's factual determinations, the Board cannot sustain a finding applying the relevant law. Soderberg Rawhide Ranch Co., 63 IBLA 260 (1982); see also Conoco, Inc., 96 IBLA 384, 389 (1987); Fred D. Zerfoss, 81 IBLA 14 (1984). A decision rejecting an application for conveyance of mineral interests because the lands applied for have "known mineral values" must be supported by facts of record, *i.e.*, a thorough mineral report that is made part of the record. See, e.g., Jerry R. Schuster, 83 IBLA 326 (1984); Denman Investment Corp., 78 IBLA 311 (1984); Dean A. Clark, *supra*. For this reason, BLM's decisions rejecting the applications must be set aside, and the matters remanded to BLM for readjudication.

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<sup>3/</sup> Cf. Kenneth C. Pixley, 88 IBLA 300, 301 (1985) (affirming a BLM decision based on a mineral report where no "field check" had been done). <sup>4/</sup> See, e.g., Jean Hubbard Waters, 89 IBLA 179, 182 (1985); Robert Gattis, 73 IBLA 92, 96 (1983); Dean A. Clark, 53 IBLA 362, 364 (1981); and cases cited.

[2] Even if the land is shown to possess "known mineral values," the Klumps might be entitled to the conveyance if they are able to establish that the reservation of ownership of the mineral estate in the United States would interfere with or preclude appropriate non-mineral development of the land, or that such development would be a more beneficial use of the land than its mineral development. 43 U.S.C. § 1719(b)(3)(i) (1982); 43 CFR 2720.1-1(a)(2). We are not satisfied that BLM properly considered whether such interference might exist.

In their applications, the Klumps alleged generally that the present use of the lands for grazing might be threatened with destruction under the pretense of exploration or development of mineral interests. BLM rejected this allegation, ruling without explanation that the Klumps had failed to make a showing on this question. Under 43 CFR 2720.1-2(d)(4), applicants to purchase Federally owned mineral interests are required to make "as complete a statement as possible" concerning, *inter alia*, why the reservation of the mineral interests in the United States would interfere with or preclude appropriate nonmineral development of the land covered by the application, and how and why such (nonmineral) development would be a more beneficial use of the land than its mineral development. Possibly, BLM determined that the Klumps had not met this requirement.

BLM is advised that, when an application for conveyance of Federally owned mineral interest fails initially to adequately specify either why the reservation of mineral interests is interfering with or precluding appropriate nonmineral development of the lands applied for, or how and why such nonmineral development would be a more beneficial use of these lands than mineral development, such failure does not subject the application to automatic rejection. Rather, if BLM determines that the lands applied for have "known mineral values," it should provide the applicant an opportunity to make a showing as to possible interference with existing uses, as contemplated by 43 CFR 2720.1-1(a)(2) and 2720.1-2(d)(4). See, e.g., Jean Hubbard Waters, *supra* at 181; Kenneth C. Pixley, *supra* at 303. <sup>5/</sup> BLM may then adjudicate the question of whether applicants meet the criteria established by section 209(b)(3)(i) of FLPMA, with the benefit of the applicants' input on this question.

There is ample room in the regulations governing processing of applications for conveyance, 43 CFR Subpart 2720, to allow for refinement of the conveyance application subsequent to the initial filing. Under 43 CFR 2720.1-2, an applicant is required only to submit "as complete a statement as possible" in his initial application. Clearly, if he does not know that the lands possess "known mineral values" or what types of minerals are present, it may not be possible for him to anticipate and address any

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<sup>5/</sup> In Waters, *supra*, the applicant was given an opportunity to demonstrate how mineral development might interfere with her use of the land or preclude appropriate nonmineral use of the land, or how such use of the land would be more beneficial than the development of the minerals. She failed to respond. Similarly, in Pixley, *supra*, the applicant was notified by BLM of his obligation to file this statement, but did not respond.

adverse effect of development in his initial application. In fact, the applicant may not become aware of the need to address the "adverse effect" question until after BLM makes its determination regarding known mineral values. It is therefore reasonable to provide the applicant an opportunity to amend its application to address any "adverse effect" following notification by BLM that there are "known mineral values" on the lands.

Under 43 CFR 2720.1-3(a), BLM is allowed to withhold action on the application until it "meets the requirements for further processing." Thus, BLM can notify the applicant of its determination that the lands possess "known mineral values" and, at the same time, notify him that his initial application did not meet "the requirements for further processing," thus giving him an opportunity to tender evidence of possible interference with existing uses. BLM can withhold consideration of the application to afford the applicant an opportunity to amend his application.

The Klumps did not have an adequate opportunity to present evidence on the "adverse effect" question. Accordingly, if, on remand, BLM again determines that the subject lands have "known mineral values" (based on sufficient facts of record, as discussed above), it should notify the Klumps of this determination and provide them an opportunity to supplement the application with further information regarding the requirements of 43 CFR 2720.1-2(d)(4).

Any subsequent decision by BLM rejecting the Klumps' applications for conveyance will, of course, be subject to appeal under 43 CFR Part 4.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are set aside, and the matters are remanded to BLM for readjudication.

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David L. Hughes  
Administrative Judge

I concur:

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R. W. Mullen  
Administrative Judge