

INTERIOR BOARD OF LAND APPEALS

Todd S. Nicholson

129 IBLA 213 (April 28, 1994)

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Appeal from a decision of the Eastern States Office, Bureau of Land Management, requiring payment of a fair market value purchase price in consideration for conveyance of a Federally owned mineral interest. MNES 44207.

Set aside and remanded.

1. Applications and Entries: Generally--Federal Land Policy and Management Act of 1976: Conveyances--Federal Land Policy and Management Act of 1976: Sales

When BLM finds that a tract of land has no significant mineral potential, approves conveyance of the Federal Government's mineral interest in the tract pursuant to sec. 209(b)(1) of FLPMA, 43 U.S.C. § 1716(b)(1) (1988), and calls for payment for the Government's mineral estate at its fair market value, the Government's fair market value determination must be supported by the record.

APPEARANCES: Todd S. Nicholson, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Todd S. Nicholson has appealed from a March 5, 1992, decision issued by the Eastern States Office, Bureau of Land Management (BLM), approving an application for conveyance of the 50-percent interest in the mineral estate in 160 acres located in the NE $\frac{1}{4}$ of sec. 23., T. 123 N., R. 36 W., fifth principal meridian, Pope County, Minnesota, owned by the Federal Government.

On May 20, 1991, H. G. Thornburg filed application MNES 44207, seeking conveyance of the Federally owned mineral interest in the above-described tract. Thornburg's application stated that when he sold the property to Todd S. Nicholson he had agreed "to have the mineral reservation removed and released of record."

In a November 27, 1991, BLM mineral report (Mineral Report), prepared pursuant to 43 CFR 2720.1-3, BLM's examining geologist stated his findings that the tract did not "possess any mineral potential of consequence, nor was there encountered any data to infer such." The author then stated that "the property's low mineral potential does not justify the retention of a split-estate condition of ownership," and recommended conveyance of the

Federal Government's 50-percent interest in the mineral estate pursuant to section 209(b)(1) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1719(b)(1) (1988).

The Assistant District Manager for Solid Minerals, Rolla, then forwarded the Mineral Report to the State Director (920), under cover of a November 27, 1991, memorandum stating that "[b]ased on the information available the subject property is not considered to have any value for minerals." The cost of preparing the Mineral Report was \$438.08. The next item in the file is a January 3, 1992, memorandum from the Deputy State Director, Mineral Resources, to the Deputy State Director, Operations, stating that the requested Mineral Report had been prepared, and that "the property has low mineral potential and no exploratory program is recommended." The Deputy State Director, Mineral Resources, then stated that "the appraised value is \$25 per mineral acre for a total of \$2000 and the cost of preparing this report." An additional \$87.68 was charged for 2 hours of work performed by an economist.

In its March 5, 1992, decision BLM stated that the mineral rights could be "conveyed for the recommended nominal fair market purchase price of \$25.00 per acre for a total of \$2,000.00," and that patent would issue to Thornburg upon receipt of that sum. A detailed breakdown of costs was set out in the decision, but the decision contains nothing to shed any light on how BLM had arrived at a \$25 per acre fair market value for the mineral rights (\$12.50 per acre for the Government's 50-percent interest).

In his statement of reasons, Nicholson states that Thornburg and his counsel "agreed to undertake removal of the encumbrance on my behalf." Nicholson asserts that he had believed that it would be no great burden for the Department to simply convey its interest, after administrative costs were paid. Nicholson effectively requests conveyance of the mineral interest at no further cost.

[1] Section 209(b)(2) of FLPMA, provides that "conveyance of mineral interests * * * shall be made only to the existing or proposed record owner of the surface, upon payment of administrative costs and the fair market value of the interests being conveyed." (Emphasis added.) The applicable regulation, 43 CFR 2720.3(a) directs the authorized officer to determine the fair market value and notify the applicant in writing of the fair market value and the administrative costs.

The apparent basis for BLM's March 5, 1992, decision that the fair market value of the 50-percent interest in the mineral estate owned by the Government was \$25 per acre is the January 2, 1992, memorandum from the Deputy State Director, Mineral Resources, to the Deputy State Director, Operations. The author of that memorandum states that, based upon the conclusions in the Mineral Report (quoted above) "the appraised value is \$25 per mineral-acre for a total of \$2,000 and the cost of preparing this report." This statement is contrary to the statement in the November 27, 1991, cover memorandum that "the subject property is not considered to have any value for minerals," and the Mineral Report contains nothing that could be construed as an attempt to place a fair market value on the mineral interest owned

by the Government. The decision notes that an economist spent 2 hours considering the sale, but there is nothing to indicate what the economist did or concluded, and the Deputy State Director, Mineral Resources, refers to the Mineral Report as the basis for his determination, rather than an economist's conclusion.

In most cases a fair market value determination will be affirmed if the appellant cannot demonstrate error in the appraisal method or present convincing evidence that the fair market value determination is erroneous. See, e.g., Coy Brown, 115 IBLA 347 (1990); Thomas L. Sawyer, 114 IBLA 135 (1990). However, the case file must contain the facts or an analysis sufficiently complete to allow the Board to conclude that the fair market value determination is supported by the record. See Communications Enterprises, Inc., 105 IBLA 132 (1988); High Country Communications, Inc., 105 IBLA 14 (1988); Clinton Impson, 83 IBLA 72 (1984); Full Circle, Inc., 35 IBLA 325, 85 I.D. 207 (1978).

We find nothing that gives us an inkling of how BLM arrived at the fair market value of the Government's interest in the minerals. Under FLPMA, 43 U.S.C. § 1719 (1988), BLM is authorized and required to charge fair market value for the mineral interest being conveyed. If we are to base our determination on the record, we would be no more able to support BLM's fair market value determination if the appellant had argued that the fair market value was too low than we now are, when the appellant is arguing that it is too high. Thus, there is no more support for a finding that BLM has met its statutory obligation to collect the fair market value than there is for a finding that the amount called for is not excessive. The decision must be set aside.

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 set aside and the case is remanded for further action consistent herewith.

R. W. Mullen
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge