

GREGORY PAUL

IBLA 96-434

Decided February 19, 1998

Appeal from a Decision of the California State Office, Bureau of Land Management, rejecting prospecting permit application CACA 35294.

Affirmed.

1. Mineral Lands: Prospecting Permits

The Department of the Interior has no authority to issue a prospecting permit for hardrock minerals on acquired lands subject to section 402, Reorganization Plan No. 3 of 1946, 60 Stat. 1099, without the consent of the Forest Service, U.S. Department of Agriculture.

APPEARANCES: Gregory Paul, Perris, California, pro se.

OPINION BY ADMINISTRATIVE JUDGE TERRY

Gregory Paul has appealed from a May 21, 1996, Decision of the California State Office, Bureau of Land Management (BLM), rejecting his hardrock prospecting permit application CACA 35294 for lands within the San Bernardino National Forest. That application, for prospecting for gold and silver, was filed with BLM on February 8, 1995, for 41.29 acres described as T. 3 N., R. 1 E., San Bernardino Meridian, sec. 36, MS 740 (Rainbow Quartz Mine) and MS 944 (Moonlight Quartz Mine). The surface of these lands was acquired by the Forest Service (FS), U.S. Department of Agriculture from The Nature Conservancy (TNC) by Grant Deed dated September 26, 1986, pursuant to the General Exchange Act of March 20, 1922, 42 Stat. 465 (codified at 16 U.S.C. § 485 (1994)).

The BLM's Decision explains that although originally reserved by TNC, the minerals in the lands embraced by Paul's application became available for leasing under the Weeks Act of March 1, 1911, 36 Stat. 961. Hardrock leasing of lands acquired under the Weeks Act was authorized by the Act of March 4, 1917, 39 Stat. 1150, under such terms and conditions as the Secretary of Agriculture deemed appropriate. Pursuant to section 402 of Reorganization Plan No. 3 of 1946, 60 Stat. 1099, this authority was transferred to the Secretary of the Interior, with the proviso that mineral development of such lands could be authorized only upon a finding by the

Secretary of Agriculture "that such development will not interfere with the primary purposes for which the land was acquired and only in accordance with such conditions as may be specified."

On February 13, 1996, BLM received a report from the FS objecting to the issuance of a prospecting permit for application CACA 35294. The FS submitted to BLM an environmental assessment (EA) showing that the lands were acquired to protect sensitive plants and their habitat. The Regional Forester's cover letter to BLM stated that three plant species under FS protection were proposed for listing under the Endangered Species Act, 16 U.S.C. § 1501 (1994), by the U.S. Fish and Wildlife Service. The Regional Forester noted that "[a] definitive plant survey has not been completed for this permit proposal, because the surveys need to be conducted in the spring/early summer when the plants are most identifiable." The Regional Forester observed, however, that the habitat utilized by the plants "needs protection" and such protection would be best assured by rejection of the prospecting permit. The importance of protecting the plants and their habitat is addressed a number of times in the EA.

Because FS did not consent, BLM rejected Appellant's application. In addition to advising Paul of his right to appeal to the Board of Land Appeals, BLM also noted that under 43 C.F.R. § 3500.9-1(c), Paul had the option of pursuing administrative remedies with the "particular surface management agency where such agency * * * has refused consent to issuance of the lease or permit."

Paul asserts in his Statement of Reasons (SOR) that he has unpatented mining claims (the Bromley and Oxnam claims) contiguous to the area for which the prospecting permit application was filed. A plan of operations was approved for these claims on June 30, 1990. Paul cites a March 28, 1989, report by an FS botanist which states that during a brief visit to the Bromley site (SW¹/₄ NE¹/₄, sec. 36, T. 3 N., R. 2 E.) the botanist saw no threatened, endangered, or sensitive plant species within or adjacent to the proposed working area. In her report, the botanist stated that she would again visit the site later in the growing season to check for later blooming species. Paul also notes that the Regional Forester's February 6, 1996, cover letter to BLM states that a definitive plant survey had not been completed as of February 6, 1996. Paul alleges that his requests for information on threatened or sensitive plant species received inadequate consideration by the FS. He disagrees with FS's conclusion that the interests of the environment would be best served by rejection of his prospecting permit application.

[1] The BLM's Decision must be affirmed. Regulation 43 C.F.R. § 3500.9-1(b) provides: "Acquired lands shall only be permitted or leased with the written consent of the head or other appropriate official of the surface management agency." An earlier version of the applicable regulation (43 C.F.R. § 3501.2-6(d) (1985)) had provided:

The Reorganization Plan and the Acts provide that mineral development may be permitted only with the consent of the Secretary of

Agriculture and subject to such conditions as he may prescribe to protect the purposes for which the lands were acquired * * *. An application will be rejected if the Secretary of Agriculture does not give his consent.

See Energy Resources Group, 89 IBLA 233, 235 (1985), and cases there cited. Because FS has withheld its consent, the Secretary of the Interior cannot issue the permit, and the application was properly rejected.

Paul's appeal documents indicate that he filed with FS copies of the SOR filed with this Board. Regulation 43 C.F.R. § 3500.9-1(c) provides in part:

If the applicant notifies the authorized officer within 30 days of receipt of the Bureau's decision that he/she has requested the surface management agency to reconsider its decision, the time for filing an appeal under part 4 of this title is suspended until a decision is reached by such agency.

There is no indication in the case file before us that Paul filed with FS a request for reconsideration. Paul's arguments disputing FS's conclusions should properly have been lodged with that agency in a request for reconsideration of its determination.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed.

James P. Terry
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge

