



IBLA 70-93 : Utah 7126, 7130

J. D. ARCHER :  
ELIZABETH B. ARCHER

:  
Prospecting permit  
: stipulations required  
:  
: Affirmed

### DECISION

J. D. Archer and Elizabeth B. Archer have appealed from a decision dated August 26, 1969, by the Office of Appeals and Hearings, Bureau of Land Management, which affirmed separate decisions both dated June 9, 1969, by the Utah land office.

The land office decisions required the appellants, inter alia, to sign a document captioned "General Requirements" 1/ as a condition precedent to the issuance of prospecting permits, U 7126 (J. D. Archer) and U 7130 (Elizabeth B. Archer).

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1/ The "General Requirements" are as follows:

"No excessive disturbance or removal of soil or vegetation will be permitted. After completion of operations or explorations, soil surfaces will be restored to their natural contour as much as possible.

"No blasting is to be done within 500 feet of wells and springs; 300 feet of dams and reservoirs; and 500 feet of dwellings.

"When blasting along public roads, all shot holes must be a reasonable distance from the shoulder of the road. Any damage to roadways will be reported at once to the District Manager, Fillmore District.

"Water should not be taken from reservoirs, wells, springs or other water developments on Bureau administered public lands without first obtaining permission of the District Manager.

"All existing improvements located on Bureau administered public lands used will be maintained in a serviceable condition. Damaged or destroyed improvements will be replaced or restored to their original condition.

"Fences on BLM administered public lands shall not be let down without special permission from the District Manager. Gates should be left open or closed as found or as directed by attached signs.

The permit applications relate to copper, lead, zinc, molybdenum, and associated minerals on lands in T. 11 S., Rs. 3 W, and 4 W., S.L.M., Utah.

The appellants contend in essence that the "General Requirements" are unreasonable. Therefore, they request that they be waived as a condition to the issuance of permits.

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fn 1 (cont)

"Adequate protective measures shall be provided at any tunnel, shaft, pit, drill hole, blasting site and storage site to protect the life, safety or property of other persons, and to protect livestock and wildlife.

"Permittee shall not remove, injure, deface or alter any object of scenic, historic or scientific interest, including Indian ruins, pictographs and other archeological remains. Where a question exists as to whether or not an object is of scenic, historic or scientific interest, submit the matter in writing to the District Manager for final determination.

"The District Manager shall be informed of the location of any drilled holes in which water was encountered, together with information concerning the depth water bearing strata were encountered and an estimate of quantity and quality of water. In the event flowing artesian water is encountered, the District Manager will be notified immediately.

"During the construction of roads and trails over BLM administered public lands adequate culverts and dips will be placed at drainage crossings. Fills will not be placed in gullies or drainage crossings without adequate culvert drainage. Upon termination of use of roadways, trailways and other cleared areas on BLM administered public lands used and constructed by the party conducting the mineral exploration, earthen water bars (also known as water-breaks) shall be constructed at various intervals on sloping areas to divert runoff and minimize erosion.

"All areas cleared during the mineral exploration operations shall be seeded or planted as directed by the District Manager. Such areas include roadways, trailways, drilling sites and similar areas. Seeding and planting criteria to be used are as follows:

- (a) Method of seeding or planting to be used: Drilling
- (b) Species to be used: Agropyron Cristatum (Crested Wheatgrass)
- (c) Seeding rate to be used (lbs. viable seed/acre): 7##/acre.
- (d) Period seeding or planting permitted: Sept. 15 to Dec. 31.

The appellants assert that (1) these requirements impose far more stringent controls than the decision by the Bureau of Land Management would indicate, (2) section 12 of the basic permit form provides "all of the control necessary to protect the public interest", and (3) the requirements ". . . could conceivably be construed to require the reporting of every blade of grass encountered."

Section 12 2/ of the basic permit imposes a duty upon a permittee to safeguard the environment and other existing values and to restore the surface of the land to its former condition.

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fn 1 (cont)

"Disturbance of authorized livestock use will be held to an absolute minimum.

"To qualify for an extension beyond the 2-year primary period will require at least one adequate test well by core drilling or comparable prospecting satisfactory to the Regional Mining Supervisor.

"For a preference right lease, proof of the discovery of a valuable deposit, by more than one drill hole or other acceptable prospecting methods, must be satisfactory to the Regional Mining Supervisor."

These provisions were formulated by the Utah State office of the Bureau of Land Management. In some particulars, e.g. species of grass to be used, seeding rate, and period of seeding, they reflect local conditions.

2/ Sec. 12 reads as follows:

"Surface use restrictions. (a) If any of the land is embraced in a reservation or is segregated for any particular purpose, permittee agrees to conduct all operations thereon in conformity with such requirements as may be made by the Bureau of Land Management and/or the agency administering the surface for the protection and use of the land for the purpose for which it was reserved or segregated, so far as may be consistent with the use of the land for the purpose of this permit, which latter use shall be regarded as the dominant use unless otherwise provided herein or separately stipulated.

(b) Permittee shall take such reasonable steps as may be needed to prevent operations from unnecessarily: (1) causing or contributing to soil erosion or damaging any forage and timber growth; (2) polluting the waters of springs, streams, wells, or reservoirs; (3) damaging crops, including forage, timber, or improvements of a surface owner; or (4) damaging range improvements whether owned by the United States or by its grazing permittees or lessees.

The requirements, to which the appellant objects, contain specifics directed to the same goals, e.g., no blasting is to be done within 500 feet of wells and springs, or within 300 feet of dams and reservoirs; and sets forth the method, species, seeding rate and period of seeding, for the purpose of revegetating cleared areas. In addition, they specifically interdict the removal, injury, defacing, or alteration of any object of scenic, historic, or scientific interest, including Indian archeological remains.

As indicated earlier, the appellants do not question the Department's authority to impose environmental and related requirements upon a mineral permittee. Their position is simply that the "General Requirements" are unnecessary and unduly onerous.

Those requirements, *inter alia*, put flesh on the skeletal provisions of section 12 of the permit form. They also impose additional stipulations reasonably calculated to protect the land, environment, and public values. Although the appellants make general assertions, they have not shown that any specific provision of the "General Requirements" is unreasonable. Their contention that the "General Requirements" "could conceivably be construed to require the reporting of every blade of grass encountered" is dissonant with the following provisions:

No excessive disturbance or removal of soil or vegetation will be permitted. (Emphasis supplied.)

All areas cleared during the mineral exploration operations shall be seeded or planted as directed by the District Manager.

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fn 2 (cont.)

(c) Upon any partial or total relinquishment or the cancellation or expiration of this permit, or at any other time prior thereto when required or when deemed necessary by the Government, the permittee shall fill any sump holes, ditches, and other excavations, remove or cover all debris, and, so far as reasonably possible restore the surface to its former condition, including the removal of structures as and if required. The Government may prescribe the steps to be taken and restoration to be made with respect to lands of the United States and improvements thereon."

These requirements implicitly recognize that land may be denuded in the exploration process.

We have reviewed carefully the provisions of the "General Requirements" in the light of the appellants' contentions. We find no basis to conclude therefrom that such requirements are unnecessary, unreasonable, arbitrary, or unduly onerous. On the contrary, such requirements are reasonably related to the environmental ethic of this Department and to the obligations of this Department under the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4331-47 (Supp. V, 1969). The latter essentially states that every federal agency shall consider ecological factors when dealing with activities which may have an impact on man's environment.

The appellants' contention that the "General Requirements" are not ". . . necessary to protect the public interest" is their view. It is the Department's responsibility to make that determination.

Having found that the "General Requirements" in the light of this appeal are appropriate and reasonably related to the activities authorized under the mineral permits sought, we see no basis to disturb the decision below.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision of the Bureau of Land Management is affirmed.

Frederick Fishman, Member

We concur.

Joan B. Thompson, Member

Anne Poindexter Lewis, Member.

