

HENRY N. GERRITSEN
and
JOHN XANTHOS

IBLA 70-213

Decided August 9, 1971

Mineral Lands: Prospecting Permits--Mineral Leasing Act for Acquired Lands: Consent of Agency--
National Environmental Policy Act of 1969

An application for a hard rock prospecting permit for acquired lands within an experimental watershed in a national forest is properly rejected where the Forest Service refuses to consent to allowance of the application because of possible adverse effects to the watershed, and its reasons are consistent with the purposes for which the lands were acquired and with the ecological factors expressed in the National Environmental Policy Act of 1969.

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IBLA 70-213 :

Utah 10014

HENRY N. GERRITSEN
JOHN XANTHOS

: Acquired lands hard rock
: prospecting permit application
: rejected

: Affirmed

DECISION

Henry N. Gerritsen and John Xanthos have appealed to the Secretary of the Interior from a decision by the Office of Appeals and Hearings, Bureau of Land Management, dated June 10, 1970, which affirmed a Utah land office decision of March 9, 1970, rejecting their application U-10014 for a permit to prospect for copper, gold, silver, lead, and zinc on the E 1/2 E 1/2, section 18, T. 3 N., R. 1 E., S.L.M., Utah, within the Wasatch National Forest.

The application was rejected on the basis of a report from the Forest Service, United States Department of Agriculture, that the lands are within the Davis County Experimental Watershed, and that a prospecting or mining activity would adversely affect the watershed, would have a significant adverse aesthetic impact on the area, and would adversely affect a deer winter range.

In affirming the land office decision, the Office of Appeals and Hearings pointed out that the lands applied for are acquired lands and that by Bureau regulation, 43 CFR 3501.2-6(d) (1971), formerly 43 CFR 3220.0-6(b), consent of the Forest Service would be necessary before an application could be permitted, and in the absence of such consent the application is properly rejected. This conclusion is correct.

The Forest Service has reported that this land was acquired under the act of June 7, 1924, ch. 348, 43 Stat. 653, as amended and supplemented by the acts of March 3, 1925, ch. 447, 43 Stat. 1127; April 13, 1926, ch. 119, 44 Stat. 242; May 5, 1944, ch. 189, 58 Stat. 216; September 21, 1944, ch. 412, 58 Stat. 734, 736, 737; July 25, 1947, ch. 327, 61 Stat. 449; October 26, 1949, ch. 735, 63 Stat. 909. See

16 U.S.C. §§471, 505, 515, 564-70 (1964). By section 402, Reorganization Plan No. 3 of 1946, 60 Stat. 1099, the functions of the Secretary of Agriculture relating to the leasing and other disposal of minerals in certain acquired lands, including these lands, were transferred to the Secretary of the Interior. Mineral development may be permitted by the Secretary of Interior, however, 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 or are being administered.

The appellants contend that the application should be allowed so they may properly investigate whether there is a potential copper mineral deposit which could be developed economically. They assert such investigation is vital to the United States for reasons of national security. They also contend that only the copper outcroppings would be evaluated with disturbance of the land kept to a minimum, and such disturbance would be quickly masked by the natural processes of "mother nature" should their investigations reveal the mineral deposits to be uneconomical. They also state that they do not intend to disturb the existing stream in the area from which the water supply for the nearby town of Farmington is derived.

In view of appellants' contentions, we requested a further report from the Forest Service concerning this application. The Forest Service has reported that the lands applied for are vital to the Davis County Experimental Watershed and that disturbance of the lands would not be consistent with the purposes for which these lands were acquired. Generally, the watershed is managed to assure adequate protection of the national forest lands and other lands within the county from fires and erosion and to control and prevent flooding. Many visitors to the watershed are instructed on the measures taken to protect the area and to utilize its resources for maximum public benefit. The lands applied for are on a steep hill directly above a road into the watershed. Disturbance of these lands could adversely affect the use of the road and the watershed. The watershed can be properly managed only if these lands are left undisturbed in their natural state.

The reasons given by the Forest Service for withholding its consent to the granting of this permit application are consistent with the purposes for which the lands were acquired and with the ecological factors expressed in the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4331-47 (Supp. V, 1970). ^{1/} Therefore, in the absence of the consent of the Forest Service, the application was properly rejected.

^{1/} Cf. J. D. Archer, Elizabeth B. Archer, 78 I.D. 189 (1971).

Accordingly, 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 is affirmed.

Joan B. Thompson, Member

We concur:

Edward W. Stuebing, Member

Anne Poindexter Lewis, Member

