

POWHATAN MINING COMPANY

IBLA 73-38

Decided April 26, 1973

Appeal from a decision (ES 8927) of the Eastern States Office, Bureau of Land Management, rejecting application for asbestos prospecting permit.

Affirmed.

Geological Survey -- Mineral Lands: Leases -- Mineral Lands: Prospecting Permits -- Secretary of the Interior

An asbestos prospecting permit application, filed under 43 CFR Part 3510, may be granted only where the lands are not known to contain valuable deposits of mineral. The determination whether a specific tract of land is subject to the issuance of a prospecting permit or of a mineral lease is committed to the Secretary. In making such a determination, the Secretary is entitled to rely upon advice furnished by his technical representative, the Director of the Geological Survey.

Geological Survey -- Mineral Lands: Prospecting Permits

The rejection of an application for a prospecting permit for lands within the exterior boundaries of a national forest in Georgia, filed pursuant to 43 CFR Part 3510, is properly sustained where appellant has failed to demonstrate error in a determination of the Geological Survey that the land is valuable for asbestos.

APPEARANCES: Harry W. Ferkler, Esq., Baltimore, Maryland, for appellant.

OPINION BY MR. FISHMAN

Powhatan Mining Company has appealed from a decision of the Eastern States Office, Bureau of Land Management, dated June 23, 1972, which rejected appellant's application for an asbestos prospecting permit.

The land described in appellant's application is acquired land located in the Chattahoochee National Forest, Rabun County, Georgia. The application was filed under 43 CFR Part 3510 (1972). The application was rejected because the Geological Survey reported that the land is known to be valuable for asbestos and associated minerals. The Geological Survey suggested competitive leasing.

Appellant contends on appeal that:

1. The action of Geological Survey was arbitrary in that Powhatan was applying only for the right to prospect for asbestos and would not interfere with the prospecting rights as to any other minerals.
2. That the decision was unreasonable in that no evidence was furnished the applicant of any other party interested in prospecting, thus denying Powhatan the right to engage in competitive bidding.
3. The length of time in acting on Powhatan's application was in excess of one year, which Powhatan contends was unreasonably long and prejudiced their rights as to other prospecting opportunities.

Prior to the issuance of a permit, appellant has no right to engage in prospecting. On the contrary, it is within the discretion of the Secretary of the Interior or his delegate to issue prospecting permits or leases on land acquired by the United States. See W. A. Hudson, II, 1 IBLA 232, 236, 78 I.D. 15, 17 (1971). Upon the issuance of a permit, a permittee is granted the exclusive right "to prospect on and explore the lands involved to determine the existence of, or workability of, and commercial value of the mineral deposits therein." 43 CFR 3510.1-2. (Emphasis added.) On the other hand, land which is known to contain valuable deposits of minerals is not subject to the issuance of prospecting permits for such minerals. Lloyd K. Johnson, 8 IBLA 73 (1973); 43 CFR 3510.0-3.

We stated in Johnson as follows:

The character of the lands subject to the issuance of prospecting permits is described in 43 CFR 3510.0-3 (1972) in these words

The Secretary of the Interior is authorized to issue permits to qualified applicants to

prospect unclaimed and undeveloped areas of mineral lands and mineral deposits in public and acquired lands * * *. [Emphasis supplied.]

That provision must be read in pari materia with 43 CFR 3520.1-2(a) (1972), which in part reads as follows:

The Secretary is authorized to lease competitively those lands as set forth in Subpart 3501, containing valuable mineral deposits * * *.

Thus it is clear that if land is known to contain valuable deposits it is not subject to the issuance of a prospecting permit therefor. See Lowell Thompson, A-28342 (July 18, 1960); cf. Atlas Corporation, 74 I.D. 76 (1967).

The determination whether a specific tract of land is properly subject to the issuance of a prospecting permit or to a mineral lease is committed to the Secretary. In making such a determination, the Secretary is entitled to rely upon advice furnished by his technical representative, the Director of the Geological Survey * * *.

In the case at bar, the Geological Survey has determined that the land in issue is valuable for asbestos and associated minerals. Thus, appellant's prospecting permit was properly rejected. Although appellant does not agree with the determination made by the Geological Survey, it has failed to demonstrate that the Survey's determination is erroneous. In the absence of a clear showing of error, a determination of the mineral character of land made by the Geological Survey will not be disturbed. Health B. Fowler, 8 IBLA 376 (1972); see J. D. Archer, 4 IBLA 323 (1972); cf. James C. Goodwin, 9 IBLA 139, 80 I.D. 7 (1973). None of appellant's reasons affords any basis for changing that determination.

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 affirmed.

Frederick Fishman, Member

We concur:

Anne Poindexter Lewis, Member

Joan B. Thompson, Member.

