

THE HANNA MINING COMPANY

IBLA 75-118

Decided May 5, 1975

Appeal from a decision of the Eastern States Office, Bureau of Land Management, dated July 25, 1974, rejecting The Hanna Mining Company's preference right lease application for the lands in hardrock prospecting permit BLM-A 028148 (Minnesota).

Affirmed.

1. Mineral Lands: Prospecting Permits: Generally

A permit issued pursuant to Section 402 of the President's Reorganization Plan No. 3 of 1946, and the Act of June 30, 1950, 16 U.S.C. § 508b (1970), shall not exceed 20 years' duration. During the 20-year period at any time valuable minerals are discovered the permittee has the right to apply for a mining permit.

2. Mineral Lands: Leases

An application for a hardrock preference right lease is properly rejected where the permittee does not demonstrate the existence of a workable deposit of the mineral for which the permit was issued, within the term of the permit.

APPEARANCES: W. P. Weber, Senior Vice President, The Hanna Mining Company, Cleveland, Ohio, for Appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

The Hanna Mining Company appeals from a decision of the Eastern States Office, Bureau of Land Management, dated July 25, 1974, rejecting its application for a preference right lease, BLM-A 028148.

Hanna had originally been issued a hardrock prospecting permit BLM-A 028148 on September 1, 1953, for a two-year term, subject to renewal from year to year, not to exceed 20 years. <sup>1/</sup> On September 5, 1972, before expiration of the 20 years allowable under the permit, Hanna filed application for a preference right lease for the lands remaining in the permit. The BLM Office, relying on information from the Geological Survey that Hanna during the course of its holding as a mining permittee had failed to show a valuable deposit of minerals on the land, rejected the preference right lease application.

Hanna appeals on the basis that mineralization had been exposed on Lot 8 sec. 24, T. 62 N., R. 11 W., 4th P.M., Minnesota, included in the permit. Appellant claims that samples it took from an uncovered area caused by previous removal of rock for road material was analyzed and forwarded to the Geological Survey. Appellant contends that it was unaware of any additional requirements to perfect its application and was not informed of the impending negative decision.

Section 13 of the prospecting issued to Honna stated:

The right to mine or remove minerals in merchantable quantities is not granted in this permit. The permittee, however, shall have a preference right during the term of this permit to secure a mining permit covering any of the lands described in this prospecting permit. (Emphasis added.)

The Geological Survey informed the BLM Office by memorandum dated July 10, 1974, that Hanna had failed to show that a valuable deposit of minerals was discovered on the land by prospecting conducted during the term of the permit.

[1] The permit was issued to Hanna pursuant to Sec. 402 of the President's Reorganization Plan No. 3 of 1946, 60 Stat. 1099, and the Act of June 30, 1950, 16 U.S.C. § 508b (1970), and the regulations thereunder, 43 CFR 200.31 et seq. (Circular 1668, 12 F.R. 8679, December 20, 1947), and 43 CFR 199.61 et seq. (Circular 1777, 15 F.R. 9355, December 28, 1950). The 43 CFR 200.35

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<sup>1/</sup> The original permit covered 561.65 acres. Following mesne partial terminations the permit remained in force on 183.25 acres, including lot 8 sec. 24, NW 1/4 SE 1/4 sec. 26, N 1/2 NW 1/4, SW 1/4 NW 1/4 sec. 32, T. 62 N., R. 11 W., 4th P.M., Minnesota.

stated that " \* \* \* [p]rospecting and mining permits shall not exceed 20 years' duration \* \* \* ." 2/

If during the 20-year period Hanna discovered valuable minerals, it had the right to apply for a mining permit. Having done little or nothing to develop a discovery of a valuable mineral during the 20-year term of the prospecting permit, Hanna cannot now validly contend that it has not had an opportunity to make a discovery.

Assuming, arguendo, that Hanna had a right to seek a preference right lease prior to expiration of its permit, the provisions of 43 CFR 3520 et seq. would apply. Section 3520.1-1(a)(3) states:

A permittee who discovers any valuable deposits of minerals shall be entitled to a preference right lease for the mineral \* \* \*. (Emphasis added.)

Thus, as was stated in the BLM Office decision, discovery of a valuable deposit of minerals is a necessary prerequisite to the issuance of a preference right lease. Appellant's showing to the Geological Survey is not adequate to support a finding that a valuable deposit of minerals has been disclosed on any of the permitted lands.

[2] An application for a hardrock preference right lease is properly rejected where the permittee does not demonstrate the existence of a workable deposit of the mineral for which the permit was issued within the term of the permit. E. C. Beede, 7 IBLA 177 (1972).

On appeal to this Board appellant merely takes issue with the conclusion reached by the Geological Survey, arguing that the evidence which appellant submitted should have been treated as sufficient to establish the fact that a valuable deposit had been discovered during the term of the permit.

It has long been accepted that it is for the Secretary or his delegate to determine, from the information which he has at the time he considers an application, whether the applicant has demonstrated his entitlement to be granted a preference lease. See D. E. Jenkins, 55 I.D. 13 (1934). Of course, we recognize that the Geological Survey in conducting its examinations and collection of other data is

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2/ By way of comparison, present regulations governing hardrock prospecting permits provide for only a two-year term. 43 CFR 3511.1-1 (1974). Prospecting permits now require the drilling of at least one core hole in each tract under permit.

acting as the Secretary's expert and is providing technical advice so that a proper determination can be made in these matters. In addition, the Director of the Geological Survey has been expressly entrusted with the "classification of the public lands and examination of the geological structure, mineral resources, and products of the national domain." 43 U.S.C. § 31 (1970). Therefore, when the Geological Survey has concluded from all the available geological data that a qualifying deposit has or has not been demonstrated in a particular case, the Secretary is entitled to rely upon the reasoned opinion of his technical expert in the field. Roland C. Townsend, A-30142, A-30250 (September 14, 1965); Carl Nyman, 59 I.D. 238 (1946).

This accepted procedure has been followed consistently in the Department, placing a burden upon the applicant to present a convincing and persuasive argument to rebut the conclusions of the Geological Survey. We feel that Hanna did not meet its burden. Hanna did not assert it has found any mineral deposits in the separate tracts under permit in secs. 26 and 32. It merely asserted, following extrapolation from data derived from other than the permitted land in sec. 24, the inferred position of an ore body of perhaps 150,000 tons volume, containing about 0.63% copper and 0.2% nickel. This showing does not satisfy the requirements of the Department for a preference right lease.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Eastern States Office is affirmed.

Douglas E. Henriques  
Administrative Judge

I concur:

Edward W. Stuebing  
Administrative Judge

## ADMINISTRATIVE JUDGE GROSS DISSENTING:

If our appellate procedures are to be accorded weight in any court review, we should have before the Board meaningful summaries of the specific Geological Survey findings as to whatever elements of discovery are deficient.

In the record, the only analysis of appellant's claim of discovery is a Geological Survey memorandum of June 24, 1974. <sup>1/</sup> That memorandum states:

\* \* \* According to Mr. Owens, the original discovery of the cu-ni mineralization was made here in a pit dug for borrow material when the Spruce Road was constructed in the early 1950's. This Pit was dug and the discovery made prior to issuance of the subject permit. INCO inadvertently included this corner in their proposed open pit mine on lease ES-01353. Hanna estimates about 150,000 tons of ore averaging 0.63 percent Cu and 0.2 percent Ni, based on geologic mapping of the outcrop, surface samples taken in the pit, and INCO's extensive drilling directly south of the borrow pit.

No exploration of any significance was performed during the term of the permit which resulted in a valuable discovery. Therefore, the subject application has been recommended for rejection. (Emphasis added.)

Geological Survey does not state that appellant's quantity or quality estimates are incorrect. Neither is it stated that development costs or market prices would bar economical recovery of the copper and nickel. The specific basis for the Survey recommendation is unclear, the report merely stating that no significant exploration during the permit resulted in a discovery.

In his letter of application for preference right lease filed August 31, 1972, appellant alleged a discovery and alleged that he submitted reports of such discovery to U.S.G.S. Appellant's statement of reasons on appeal sets forth the following:

The exposed mineralization on Lot 8, Section 24, T62N, R11W, Minnesota, included in the permit, was caused by removal of mineralized rock for road material, prior to our permit. During the term of the permit, we mapped the geology of the property, located the footwall contact between gabbro and granite, sampled the Cu-Ni bearing rocks, had the

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<sup>1/</sup> The record does not show that the Memorandum was furnished to appellant.

samples analyzed, and made a prudent estimate of the tonnage and grade of ore underlying the southwest corner of the property. All of this information was submitted to the U.S.G.S. \* \* \* We complied with the terms of our permit and we submit that the results of our "other work" thereunder constitutes a discovery.

The Geological Survey memorandum of July 10, 1974, addressed to the Bureau of Land Management and the immediate basis for the decision appealed from, does not include any evidential facts, but rather states only the ultimate fact:

Our records and investigations disclose that the permittee failed to show that a valuable deposit of minerals was discovered on the land by prospecting conducted during the term of the permit.

The fact that the cut, exposing the alleged discovery, was made prior to appellant's prospecting permit is in no way determinative, for a discovery may in certain instances be made on the surface itself. If in fact a valuable discovery does exist, then the mineral should be leased and developed if there are no more important contrary considerations.

I submit that the case should be processed similarly to a contest of a mining patent; in both situations vested rights may be involved. If U.S.G.S. disagrees with appellant's figures as to quantity or quality, or if U.S.G.S. finds that appellant should submit evidence as to recovery and marketing costs vis-a-vis market price for the minerals, then appellant should be so informed. Upon Survey evaluation of such matters, if a factual issue exists, then under E. C. Beede, 7 IBLA 177 (1972), the case should be set for hearing. In Beede the Board concluded:

If the appellant had submitted reports showing what in his opinion would be workable deposits and the GS disputed his entitlement to a preference right lease, we would be disposed to order a hearing for the submission of evidence to resolve the issues. Cf. Wolf Joint Venture et al., 75 I.D. 137 (1968). However, in the absence of a factual issue, a hearing would serve no purpose.

Id. at 178.

The record herein shows that at present an unresolved factual issue exists. With further information however, it may yet be determined that the essential evidential facts are not in dispute

and that no hearing is necessary. I would remand the case for the reasons above stated.

Joseph W. Goss  
Administrative Judge

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