

GEORGE W. WRIGHT, SR. (DECEASED)

IBLA 76-56

Decided October 30, 1975

Appeal from the decision of the California State Office of the Bureau of Land Management rejecting mining lease application R-4373.

Vacated and remanded.

1. Appeals -- Rules of Practice: Appeals: Dismissal -- Rules of Practice: Standing to Appeal

A qualified heir or devisee of a deceased applicant for a mineral lease under 43 CFR 3564, or the administrator or executor of his estate, may receive the lease in the applicant's stead, or maintain an appeal from the rejection of such application on the same basis as the heirs or representatives of deceased applicants for other kinds of mineral leases where no third-party interests require consideration.

2. Mineral Lands: Leases -- Mineral Lands: Mineral Reservations -- Minerals Exploration

Where application is made to lease reserved minerals in lands patented to the State of California for park or other public purposes, the regulations do not require the discovery of a workable deposit of mineral of commercial quantity and quality as a pre-condition to the issuance of the lease. Indeed, a lease affords the only authority for the conduct of exploratory operations.

APPEARANCES: George W. Wright, Jr., pro se.

## OPINION BY ADMINISTRATIVE JUDGE STUEBING

George W. Wright, Sr. (now deceased) filed application R-4373 for a mineral lease covering certain described lands within the Anza-Borrego Desert State Park, asserting that he had discovered a commercial deposit of tungsten.

The lands in question had been patented to the State of California with a reservation to the United States, "\* \* \* together with the right to prospect for, mine, and remove the same at such times and under such conditions as the Secretary of the Interior prescribe \* \* \*" Act of March 3, 1933; 47 Stat. 1487. The leasing of such reserved minerals is governed by the regulations in 43 CFR 3564.

Following the administrative processing of the application the area was inspected jointly by representatives of the Geological Survey, the Bureau of Land Management and the California Park Service. The applicant did not accompany the inspection party, nor did anyone representing the applicant. The inspection was conducted December 9-11, 1974.

The report of the inspection revealed a serious discrepancy between the location of the lands described in the application and the sites where the applicant had done his prospecting and made his alleged discovery of tungsten. Moreover, the report states that the existence of a workable deposit is doubtful; insufficient data is available to determine the extent of the deposit; and more exploratory work is needed.

Based upon these findings the California State Office rejected the application by its decision of May 28, 1975.

However, on November 15, 1974, the applicant, George W. Wright, Sr., had died. His son, George W. Wright, Jr., has appealed, alleging that his father's confining illness had prevented him from making the inspection trip and that there was insufficient notice for anyone else to go in his place. <sup>1/</sup> He suggests the possibility that the inspection team was in the wrong place, and he states that he knows "for a fact that there is tungsten on the site because it has been assayed."

[1] The regulations in 43 CFR subpart 3564 do not address the right of an heir or the representative of a deceased applicant to receive a lease in his stead. Thus, the standing of the applicant's son to bring this appeal is in question. However, we note that with reference to other kinds of mineral

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<sup>1/</sup> Actually, the applicant died on November 15, 1974, nearly a month prior to the field examination.

leases, the regulations explicitly provide for issuance of leases to the heirs or devisees of a deceased applicant, or to the executor or administrator of his estate. 43 CFR 3502.8; 43 CFR 3102.8. In the absence of the involvement of any third party whose interests might be affected, 2/ we are disposed to apply the provisions of those regulations to the instant case as representing the general policy of the Department with respect to deceased applicants for mineral leases. Cf. Heirs of Christian E. Wicks, A-30895 (April 25, 1968). We conclude, therefore, that if appellant can meet the criteria set out in 43 CFR 3502.8, he may be substituted for the applicant. 3/

Turning now to the merits of the decision appealed from, we do not find that the regulations require the discovery of a workable deposit of mineral of commercial quantity and quality as a pre-condition to the issuance of a lease. Indeed, 43 CFR 3564.7-6 makes it clear that a lease should issue before exploratory operations are conducted. Thus, it would appear that the applicant's exploratory work in the area (other than mere surface reconnaissance) was unauthorized.

There being no requirement for a discovery of commercial ore, it cannot be said with assurance that the land is misdescribed in the application, since it adequately describes nearby land of the same status. However, if the appellant agrees that the description is in error (and we strongly urge that he check it), the description in the application is subject to being amended.

Accordingly, we conclude that the decision does not state an adequate basis for rejection of the application. This is not to say, however, that a lease must issue. The issuance of such a lease is committed to the discretion of the Secretary and those delegated with his authority to act in such matters.

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2/ We need not decide the effect of a conflicting third-party interest here, since none appears.

3/ However, as a practical matter, there appears to be but small advantage to the appellant in being substituted for his father rather than filing an application in his own right.

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 vacated and the case is remanded to the California State Office for further action consistent with this opinion.

Edward W. Stuebing  
Administrative Judge

We concur:

Martin Ritvo  
Administrative Judge

Anne Poindexter Lewis  
Administrative Judge

