

Editor's note: Reconsideration denied, request for clarification granted by order dated July 23, 1980 -- See 47 IBLA 271A & B below.

JOHN D. ARCHER
ELIZABETH B. ARCHER

IBLA 80-18

Decided May 13, 1980

Appeal from decision of the Utah State Office, Bureau of Land Management, rejecting application for preference right hardrock lease. Utah 0147507.

Affirmed.

1. Acquired Lands -- Mineral Lands: Generally -- Mineral Leasing Act for Acquired Lands: Generally -- Minerals Exploration

Where applicants for a preference right lease for hardrock minerals fail to present evidence showing the quantity and quality of the minerals discovered in the area covered by the prospecting permit, but rather present evidence showing only an extremely deep deposit of low value ore, which evidence is inadequate to show that they have made a discovery of a valuable mineral deposit, and they do not dispute the findings relied on by the Bureau of Land Management, their application is properly rejected.

APPEARANCES: John D. and Elizabeth B. Archer, pro sese.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

John D. and Elizabeth B. Archer (appellants) have appealed a decision of the Utah State Office, Bureau of Land Management (BLM), rejecting their application for a preference right hardrock lease in connection with prospecting permit Utah 0147507. This permit was issued to appellant Elizabeth Archer effective November 1, 1968.

Effective March 12, 1969, during the first term of this permit, Elizabeth Archer assigned all of her interest therein to Bear Creek

Mining Company (Bear Creek), which subsequently undertook exploration of the permit area. Although the record contains many references to Bear Creek's having submitted information gleaned from this exploration to the Geological Survey (GS), none of this information appears in the record which BLM has forwarded on appeal. A letter from Bear Creek to BLM which was received on April 14, 1970, is in the record, and it alludes to two holes, SW-9 and 36, drilled by Bear Creek on the permit lands and specifies their locations.

On August 6, 1970, Bear Creek requested that the prospecting permit be extended for a period of 2 years. As part of this request and in compliance with 43 CFR 3511.3-2, Bear Creek recited the following exploration history up to that time:

Bear Creek Mining Company has diligently prospected on the lands covered by the permit in drilling one hole to a depth of 1,165 feet and another to a depth of 3,148 feet [SW-9 and SW-36]. Evaluation of the wealth of data that can be derived from the drill cores as far as geology, alteration, mineralogy and metals content are concerned is time consuming. The high cost of deep drilling however, makes it mandatory to gain the maximum amount of information from each hole. Therefore, prospecting on the permit has been very time consuming and is anticipated to remain that way until ore grade material is intercepted. A copy of drill log hole SWT-36 was mailed to your office with the report for the second quarter of 1970. One or more holes to offset SWT-36 are planned, with drilling to start late 1970 or early 1971. [Emphasis supplied.]

Thus, as of August 1970, no discovery of ore grade material had been made. On October 16, 1970, BLM extended the prospecting permit until November 1, 1972, in order to allow Bear Creek additional time in which to explore.

On June 26, 1972, Bear Creek filed an assignment of its interest in the prospecting permit to both Elizabeth B. Archer and John D. Archer. ^{1/} On October 31, 1972, the Archers filed the instant

^{1/} The record does not show that this assignment was ever approved by BLM. The proposed assignment does bear a notation that BLM approved the assignment effective February 1, 1973, but this notation has been crossed out. BLM's decision of August 27, 1979, which is on appeal, did not address the apparent failure to take action on the request for assignment from Bear Creek to appellants. Accordingly, for the purposes of this appeal, we shall assume that this assignment was approved, despite the ambiguity of the record on this question. An unapproved assignee does, however, have standing to appeal. Haruyuki Yamane, 19 IBLA 320 (1975).

application for a preference right lease, wherein they noted that "[i]nformation relative to the occurrence [sic] of the valuable mineral deposit has been furnished to the Geological Survey." Presumably, this information was from the drilling records of SW-9 and SW-36.

In response to BLM's request for comments on the proposed assignment from Bear Creek to appellants, on December 21, 1972, GS reported that drilling had been completed on the area covered by the permit. Nothing in the record indicates that there was any further exploration there. Thus, it appears that the only data bearing on the mineral character of these lands was developed by Bear Creek, that is drill holes SWT-9 and SWT-36.

Between the end of 1972 and June 4, 1979, BLM awaited the issuance of recommendations by GS as to whether appellants were entitled to a preference right lease. On the latter date, GS issued a memorandum setting forth the following facts, apparently based on the development history of the area in question:

1. Drill hole SWT-36 intercepted a deep mineralized zone containing low values of copper and molybdenum.
2. Drill hole SWT-9, also within the permit area, failed to reach mineralization.
3. Other drill holes outside the permit area failed to provide significant evidence of mineralization and no basis for correlation with that intercepted in drill hole SWT-36.
4. The highest values of copper and molybdenum intercepted in drill hole SWT-36, if present in very large volume, would lie in the range of commercial mineralization. However, only this one point was intercepted and no volume can be estimated with this meager information.

GS concluded that "the best that can be attributed to the information obtained during the prospecting interval is that it may justify more prospecting, but it is not sufficient to establish the presence of a valuable mineral deposit. On August 27, 1979, BLM issued its decision adopting this report and, accordingly, rejected appellants' application.

[1] While the record does not contain the actual data submitted by the permittees during the development of the permit area, we are satisfied that there has been no proof offered of a valuable mineral discovery there. As evinced by Bear Creek's statement of August 6, 1970, there had been no such discovery at that time. The record further suggest that all development had been completed by December 21, 1972, prior to the apparent assignment to appellants, so that the only

exploration would appear to have been SWT-9 and SWT-36, those holes drilled by Bear Creek. Presumably, these two holes referred to by GS in its report of June 4, 1979, are the same as those which were underway in December 1970 and to which Bear Creek referred in its application for extension. It also appears that these were the only two exploration holes undertaken on the area in question.

According to GS, the information discovered by drilling these two holes shows an extremely deep deposit of low-value metal ore. This information is inadequate to show that there has been a discovery of a valuable mineral, and appellants have tendered no further information to the contrary regarding discovery on appeal. Thus, appellants have failed to make the essential showing that they have discovered a valuable mineral deposit.

Under 43 CFR 3521.1-1(i), an application may be rejected if it is determined that the evidence does not support the applicant's assertion that a valuable mineral deposit has been found. Moreover, under 43 CFR 3521.1-1(b), an applicant for a preference right lease is required to show in his application the quantity and quality of the minerals discovered within the area included within the permit in several specific ways. Appellants have failed entirely to show either the quantity or quality of the purported mineral deposit there, either in their application or on appeal. They contend that no regulation requires a showing, nor does the decision cite one. The above-cited regulations apply generally to applications for preference right leases and require a showing. Appellants have not disputed the facts shown in the BLM decision, nor have they shown facts to support their application which would warrant the hearing provided for by 43 CFR 3521.1-1(j). Therefore, BLM acted properly in rejecting this application.

Therefore, pursuant 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.

Edward W. Stuebing
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Joan B. Thompson
Administrative Judge

IBLA 80-18	:	47 IBLA 268
	:	
JOHN D. ARCHER	:	Hardcock Preference Right
ELIZABETH B. ARCHER	:	Lease Application
	:	
Petition for Clarification	:	Granted
Petition for Reconsideration	:	Denied

ORDER

The Bureau of Land Management (BLM), through the Office of the Solicitor, has filed a petition for clarification of this Board's decision in the above-captioned appeal. This petition correctly points out that the regulations set out in 43 CFR Subpart 3521 do not apply to applications for preference right leases of hardrock minerals, as the preamble to these regulations provides expressly that they do not apply to prospecting permittee who gained their rights under Sec. 402 of Reorganization Plan No. 3, 60 Stat. 1099 (May 16, 1946). This section empowers the Secretary of the Interior to authorize mineral development on acquired lands such as those here. Thus, the reference in this decision to 43 CFR 3521.1-1 are inapt. Accordingly, BLM's petition for clarification is well brought, and, insofar as it is inconsistent with this order, this decision is of no effect.

John D. and Elizabeth B. Archer (appellants) have petitioned for reconsideration of the decision affirming BLM's rejection of their application for a preference-right lease of hardrock minerals. BLM, in its petition for clarification, has addressed the question of whether the result of this decision ought to be reconsidered.

Despite the apparent current absence of requirements in the regulations regarding the type of showing which must be made in order to be entitled to a hardrock preference right lease, there is no doubt that the Archers were required to have discovered valuable deposits of minerals within the area of their prospecting permits. Section 7 of the prospecting permit provides that such a discovery must have been made as a precondition to applying for a preference-right lease. 1/ Obviously,

1/ This term provides as follows: "Permittee may apply for a preference-right lease if he shall have discovered valuable deposits of minerals covered by this permit within the permit area and within the period of this permit as issued."

there is no way for BLM to know if this precondition has been satisfied unless the permittee shows that he has made such a discovery. The record shows that appellants simply failed to demonstrate the requisite discovery of valuable minerals. Accordingly, their application was properly rejected, and it is unnecessary to reconsider our decision affirming BLM's decision so doing.

Appellants argue that they cannot be denied a lease owing to their failure to show a discovery because there is no regulation requiring them to show a discovery. This is unpersuasive. The absence of a specific procedure for proving that the permittee is entitled to a preference-right lease might allow a permittee leeway in attempting to prove entitlement to a preference-right lease. However, the absence of such a regulatory procedure cannot reasonably be construed as a dispensation of the entitlement requirements themselves, as the terms of the permit itself impose the requirements.

Edward W. Stuebing
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Joan B. Thompson
Administrative Judge

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