

**Editor's note: Reconsideration granted; decision affirmed as modified -- See (Edward Seggerson, Jr. (On Reconsideration), 74 IBLA 267 (July 25, 1983))**

EDWARD SEGGERSON, JR.

IBLA 82-657

Decided September 22, 1982

Appeal from decision of Nevada State Office, Bureau of Land Management, rejecting applications N-31807 through N-31812 for mineral leases of lands within the Lake Mead Recreation Area.

Affirmed as modified.

1. Act of October 8, 1964 -- National Park Service Areas: Land: Mining -- Mineral Lands: Leases -- Public Lands: Leases and Permits -- Regulations: Generally

The National Park Service is not an "executive department, independent establishment or instrumentality" within the meaning of 43 CFR 3501.2-6. The Department is therefore not bound by the granting or withholding of consent by the Service for a mineral lease on National Park Service lands.

2. Act of October 8, 1964 -- Mineral Lands: Leases

A decision to reject an application for a mineral lease within the Lake Mead National Recreation Area will be sustained in the absence of a showing that the authorized officer acted unreasonably in rejecting the lease for reasons relating to the protection of environmental and cultural values.

APPEARANCES: Larry L. Voigt, Esq., Las Vegas, Nevada, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Edward Seggerson, Jr., appeals from a decision of the Nevada State Office, Bureau of Land Management (BLM), rejecting applications N-31807, N-31808, N-31809, N-31810, N-31811, and N-31812 for mineral leases for gold, cobalt, silver, and copper on lands within the Lake Mead National

Recreation Area. The requested lands are located in T. 27 S. And T. 28 S., R. 65 E., Mount Diablo meridian. BLM rejected the applications for the following reasons:

The regulations, 43 CFR 3501.2-6 state in part that, "Leases or permits may be issued only with the consent of the head or other appropriate official of the executive department, independent establishment or instrumentality having jurisdiction over the lands containing the deposits. . . ."

The National Park Service, through the Superintendent, Lake Mead National Recreation Area, has recommended against issuance of the leases because your applications are in areas classified in the "Outstanding Natural Feature Sub-zone". These areas are managed for their ecological values. In addition, Section 6, T. 28 S., R. 65 E. (N-31810) and Section 30, T. 27 S., R. 65 E. (N-31808) are classified as being in the "Historic Sub-zones", which include areas of local regional historic significance that are worthy of protection and interpretation. The National Park Service feels that a commercial mining development and related operations would not be compatible with the scenic and historic resource of the areas.

The Superintendent made the recommendation against issuance of the leases in a memorandum dated January 18, 1982, to the BLM State Director. In that memorandum the Superintendent referred to another memorandum of August 23, 1978, from the Superintendent to BLM's District Manager. That memorandum reveals the following information concerning the National Park Service's recommendation against issuing the leases:

The National Park Service would not recommend to Bureau of Land Management to issue mineral leases in the described area. The entire lease area has been identified as Class IV lands (outstanding natural areas) in the Resources Management Plan and the Lake Mead Statement for Management and Planning:

". . . The commercial use of resources, such as mining, grazing, and timbering, will be controlled when in conflict with recreational values, and will be prohibited on Class IV lands (outstanding natural areas)."

The enabling legislation, Public Law 88-639 (78 Stat. 1039) states:

"Lake Mead National Recreation Area shall be administered by the Secretary of the Interior for general purposes of public recreation, benefit, and use, and in a manner that will preserve, develop, and enhance, so far as practicable, the recreation potential, and in a manner that will preserve the scenic, historic, scientific, and other important

features of the area, consistently with applicable reservation and limitations relating to such areas and with other authorized uses of the lands and properties within such areas."

In his statement of reasons, appellant asserts that there are substantial deposits of cobalt, manganese, copper, and gold in the lands requested; that certain lands in the "Historic Sub-zones" were approved for leasing; and that the mining of cobalt should be given top priority in the interest of national defense.

Mineral leasing in the Lake Mead National Recreation Area is authorized by the Act of October 8, 1964, 16 U.S.C. § 460n-3 (1976), which gives the Secretary or his delegate full discretion to grant or reject lease applications. D. L. Percell, 40 IBLA 126 (1979).

[1] The State Office indicated in its decision that it was deferring to the recommendations of the National Park Service because of the requirement of 43 CFR 3501.2-6 that "[l]eases or permits may be issued only with the consent of the head or other appropriate official of the executive department, independent establishment or instrumentality having jurisdiction over the lands containing the deposits \* \* \*."

This same situation was before the Board in Rilite Aggregate Co., 26 IBLA 197 (1976). In that case the Board stated:

The National Park Service is not "an executive department, independent establishment, or other instrumentality," but, rather, is a subordinate agency within the Department of the Interior. Therefore, the State Office's reliance upon the regulation was misplaced in this instance. The Department is not thereby bound by the National Park Service's granting or withholding of consent to lease minerals on Park Service lands. Its recommendations, however, are important factors in considering whether or not to lease such lands.

Id. at 198.

[2] The State Office decision specifically mentioned that the requested lands are in areas classified in the "Outstanding Natural Feature Sub-zone" and are managed for their ecological values. Also, BLM stated that certain lands are classified as being in "Historic Sub-zones," which include areas of local regional historic significance that are worthy of protection and interpretation. A decision to reject an application for a mineral lease, in the public interest, is within the discretion of the authorized officer, and in the absence of any showing that the decision constituted an abuse of such discretion, the decision will be sustained. Rilite Aggregate Co., supra at 201; George S. Miles, Sr., 7 IBLA 372, 373-74 (1972). In light of the land's established use as a recreation area and its special scenic and historic resources, it is reasonable to anticipate that mining operations would have adverse effects on an environment worthy of preservation. Appellant made

no showing in his statement of reasons that the environmental considerations are insufficient grounds for the rejection of the applications. Accordingly, we hold that the State Office did not abuse its discretion in rejecting the applications in order to protect the ecological features of the area. Rilite Aggregate Co., supra.

Therefore, pursuant to the authority delegated by the Secretary of the Interior to the Board of Land Appeals, 43 CFR 4.1, the decision appealed from is affirmed as modified.

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Anne Poindexter Lewis  
Administrative Judge

We concur:

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Douglas E. Henriques  
Administrative Judge

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Edward W. Stuebing  
Administrative Judge

