

DAVID BRITTON

IBLA 83-495

Decided July 25, 1983

Appeal from decision of the California State Office, Bureau of Land Management, rejecting prospecting permit/mineral lease applications, CA 13651 and CA 13652.

Affirmed.

1. Mineral Lands: Leases -- Mineral Lands: Prospecting Permits -- National Park Service Areas: Generally

Bureau of Land Management properly rejects combination prospecting permit/mineral lease applications for lands within the Whiskeytown Unit of the Whiskeytown-Shasta-Trinity National Recreation Area that are not open to mineral leasing under 43 CFR 3566.2-2.

APPEARANCES: David Britton, pro se.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

On February 15, 1983, David Britton submitted to the California State Office, Bureau of Land Management (BLM), various documents seeking rights to dredge for placer gold in certain areas of the Whiskeytown Unit of the Whiskeytown-Shasta-Trinity National Recreation Area in California. Each of his two submissions had two parts: (1) A paper labeled "Application for Mineral Lease" to which was attached a statement as to his qualifications to hold a lease and a map, and (2) a prospecting permit application for placer gold. 1/

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1/ The "Application for Mineral Lease" listed Britton's name and address, identified the acreage sought, the rental and filing fees, and the mineral sought (placer gold), and contained a statement as to his intention to dredge in Clear Creek. Application CA 13651 encompassed the W 1/2 NW 1/4, SE 1/4 NW 1/4 sec. 2, and the NE 1/4 NE 1/4 sec. 3, T. 32 N., R. 7 W., Mount Diablo meridian. Application CA 13652 included the W 1/2 SW 1/4 sec. 27, the SE 1/4 SE 1/4 sec. 28, and the NE 1/4 NE 1/4, SE 1/4 NE 1/4, SW 1/4 NE 1/4, NW 1/4 SE 1/4, NE 1/4 SE 1/4 sec. 33, T. 32 N., R. 6 W., Mount Diablo meridian.

BLM treated the submissions as hardrock prospecting permit applications, CA 13651 and CA 13652, for the described lands and, on March 9, 1983, rejected the two applications based on two findings. First, BLM found that Britton had not reproduced the prospecting permit form exactly or alternatively certified to be bound by the terms and conditions of the form as required by 43 CFR 3511.2-1(a) and 3511.2-3(b). Second, BLM found that all of the lands applied for are within areas of the Whiskeytown Unit that are not available for leasing under 43 CFR 3566.2-2. 2/

Britton timely appealed the decision and submitted copies of the prospecting permit applications reproduced in their entirety on March 29, 1983. In his statement of reasons, he argues initially that BLM incorrectly treated his applications as oil and gas lease applications and hardrock prospecting permit applications rather than prospecting permits for placer operations. He contends that this Board has held that the National Park Service (NPS) is not an independent establishment from which consent to lease must be obtained under 43 CFR 3501.2-6, 3/ and thus 43 CFR 3566.2-2(b) does not constitute authority for denial of his applications. Appellant also urges that the unavailability of these lands for prospecting and leasing is inconsistent with BLM's regulations governing resource management planning, 43 CFR Part 1600, that sufficient studies were not performed in establishing the 1-mile limitation on leasing around Whiskeytown Lake, and the lands applied for have not been addressed in a general management plan. Finally, appellant argues that his proposed operations will be consistent with the enabling legislation for the recreation area because the operation will be "recreation in nature" and will not "compromise the general land values."

[1] The Whiskeytown-Shasta-Trinity Recreation Area was established by P.L. 89-336, 79 Stat. 1295 (1965) (codified at 16 U.S.C. §§ 460q through 460q-9 (1976)). Section 6 of the Act, 43 U.S.C. § 460q-5 (1976), withdrew

2/ 43 CFR 3566.2-2 provides:

"The following areas shall not be open to mineral leasing.

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"(b) Whiskeytown Unit of the Whiskeytown-Shasta-Trinity National Recreation Area. (1) All waters of Whiskeytown Lake and all lands within one mile of that lake measured from the shoreline at maximum surface elevation.

"(2) All lands classified as high density recreation, general outdoor recreation, outstanding natural, and historic, as shown on the map numbered 611-20, 004B, dated April 1976, entitled 'Land Classification, Whiskeytown Unit, Whiskeytown-Shasta-Trinity National Recreation Area.' This map is available for public inspection in the Office of the Superintendent.

"(3) All lands within Section 34 of Township 33 north, Range 7 west, Mt. Diablo Meridian."

3/ Appellant did not refer to the source for his statement as to the Board's finding, but we believe it to be the Board's decision in Edward Seggerson, Jr., 67 IBLA 189 (1982), which did make the finding that appellant argues. That decision, however, failed to take into consideration the special consent provision of 43 CFR 3566.3 applicable to NPS areas and has been modified on reconsideration. Edward Seggerson, Jr. (On Reconsideration), IBLA (1983).

the lands in the recreation area from location, entry, and patent under the mining laws, but authorized the Secretary of the Interior to permit the leasing of both leasable and nonleasable minerals within the recreation area if "such disposition would not have significant adverse effects on the purposes of the Central Valley project or the administration of the recreation area." In December 1981 NPS, in coordination with BLM, revised the Department's regulations governing mineral leasing in units of the national park system where such activity is authorized by the statutes establishing the units. See generally 46 FR 62038-44 (Dec. 21, 1981). As part of this revision, NPS closed certain areas within units where it had identified higher values than mineral leasing during prior planning efforts. See 43 CFR 3566.2-2. 4/ The excepted areas are those areas in which NPS has determined that mineral activity would be incompatible with the primary recreational purposes for which the unit was established. 46 FR 62041-42 (Dec. 21, 1981).

We have examined the Whiskeytown Unit land classification map and the status plats for T. 32 N., Rs. 6 and 7 W., Mount Diablo meridian, and concur in BLM's conclusions that the lands sought by appellant are not available for leasing and that his applications must be rejected. 5/

4/ In the preamble to the proposed regulation, NPS provided its justification for the closure of these lands to leasing:

"Excepted Areas

"National recreation areas contain special nationally significant values and were established to provide for public outdoor recreation and to preserve scenic, scientific and historic features. To protect these special values, certain portions of the recreation areas are recommended for exception from mineral leasing in the proposed regulations. The excepted areas were selected by reference to published management plans for the units involved. The only areas specifically closed to leasing in the regulations are those where leasing would categorically interfere with management goals or higher resource values. No leasing, prospecting, or exploration would be permitted on excepted areas. The regulations would thus provide written notice to prospective lessees of those areas where mineral leasing would not be considered.

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"At Whiskeytown, special values identified in the Master Plan (1976) include the high density recreation, general outdoor recreation, outstanding natural features, natural environment, and historic zones. These zones, along with the lake and a setback from the shoreline, would be excepted from mineral leasing. This would result in excluding from mineral leasing, 18,000 acres where mineral extraction would conflict with park purposes, thereby facilitating the management of recreational opportunities and protecting outstanding natural and historic features and the water quality of the lake."

45 FR 84392 (Dec. 22, 1980).

5/ A small portion of the SW corner of the NW 1/4 SE 1/4 sec. 33, and a small portion of the SE corner of the NE 1/4 SE 1/4 sec. 33, fall outside the 1-mile boundary around the lake according to the BLM status plat. Such small unconnected acreage does not meet the requirement of being in reasonably compact form (see 43 CFR 3501.1-3) and is properly rejected on that basis. 43 CFR 3511.2-4(a)(1).

We note that the term "hardrock" is commonly used to refer to solid minerals such as gold, although it may not be entirely appropriate where placer dredging is contemplated. See A Dictionary of Mining, Mineral, and Related Terms at 499, 528, Bureau of Mines, Department of the Interior (1968). The characterization of the permits as "hardrock" has no bearing on the outcome of this appeal, however. BLM referred to mineral leasing, as did appellant, not oil and gas leasing. Contrary to appellant's assertion, NPS does have the authority to withhold consent to leasing the areas of the Whiskeytown Unit at issue. The Secretary of the Interior may lease minerals in the Whiskeytown Unit if it will not have a significant adverse effect on the administration of the recreation area. 16 U.S.C. § 460q-5 (1976). In exercising the Secretary's discretion to lease, NPS, as administrator of the unit, 6/ determined that leasing would be incompatible with the purposes of the unit in some areas where special values were identified in the master plan for the unit. Regulation 43 CFR 3566.2-2(b) represents a preemptory exercise of judgment and notice to the public that the lands are not available for leasing. This is not a case where leasing is generally permitted but NPS has declined to give its consent under 43 CFR 3566.3 in a particular instance. See DeAnn T. Gaeth, 69 IBLA 79 (1982). BLM is bound by duly promulgated regulations of the Secretary, in this case the regulation stating that the areas involved are not available for leasing. Wilfred Plomis, 34 IBLA 222 (1978).

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 California State Office is affirmed.

Will A. Irwin  
Administrative Judge

We concur:

Edward W. Stuebing  
Administrative Judge

R. W. Mullen  
Administrative Judge

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6/ See General Program Delegation, Director, NPS, 245 DM 1.1.

