

Appeal from decision of the California State Office, Bureau of Land Management, rejecting application for hard rock prospecting permit CA 12351.

Affirmed.

1. Mineral Lands: Prospecting Permits

An application for a prospecting permit for reserved minerals in former public domain, the surface of which is patented to the State of California, is properly rejected pursuant to 43 CFR 3564.4 where the State objects to approval of this application for reasons determined by the authorized officer to be satisfactory.

APPEARANCES: G. Burt Harper, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

G. Burt Harper has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated January 20, 1984, rejecting his hard-rock prospecting permit application CA 12351 for gem stone, filed April 12, 1982, for lands within T. 12 S., R. 5 E., San Bernardino Meridian. The applied-for lands lie within the Anza Borrego State Park patented to the State of California with a reservation of minerals to the United States. The BLM decision states the reason for rejection as follows:

Although the surface of the lands in the application is patented to the State of California, the mineral interest therein remains vested in the United States, and may be disposed of under the provisions of 43 CFR 3564.

The lands applied for are administered by the State of California Department of Parks and Recreation. The regulations under which the lands are subject to leasing provide, in pertinent part, that "the surface owner must be notified and should the surface owner object to leasing for reasons determined to be satisfactory by the authorized officer, the offer to lease will be rejected." The State of California has withheld its consent to leasing the lands on the basis of their non-economic feasibility and on the basis of the heavy damage that would be done to the fragile desert ecosystem.

The Bureau has evaluated the State's report and concurs with its recommendation. Accordingly, application CA 12351 is hereby rejected in its entirety.

Appellant disagrees with the State of California's conclusion that he will be unable to economically mine this area without causing damage to "the fragile desert ecosystem." He asserts this area contains many valuable gems including:

1. Tourmaline of various types, black, red, green. The red tourmaline is rubellite. In the rough it ranges in price from \$5.00 to \$50.00 a carat or \$1,150.00 to 11,500.00 a troy ounce.

Many pockets have produced hundreds of pounds of this red tourmaline plus many other different gems.

2. Other gems in the dike are garnet, topaz, beryl, and also on the contact zone spinel is found.

He assures that the land would adequately be protected stating: "As far as the damage it would incur, we would abide by the State guidelines on mining operations in this type of area. * * * If so desired, we will reclaim the land and put it back as close as possible to its natural state."

[1] As correctly indicated by BLM, appellant's application must be considered pursuant to the governing regulation, 43 CFR 3564.4, which specifically provides for lands patented to the State of California for park purposes:

The authorized officer of the proper office will notify the surface owner or his authorized representative of each application received. Notice of any proposed offer of lands for lease will also be given to the surface owner prior to publication thereof. Should the surface owner object to the leasing of any tract for reasons determined by the authorized officer to be satisfactory the application will be rejected or the offer of the land for lease will be withheld.

This Board has recently considered other prospecting applications for lands within the Anza Borrego State Park. In Elton Elliott, 82 IBLA 179 (1984), we emphasized that the regulatory requirement is clear and mandatory; notice of each prospecting application must be given to the State prior to adjudication. However, we also noted that once the State has had an opportunity to comment on the particular application in question, the authorized BLM officer has the ultimate responsibility for approval or rejection of the application. Elton Elliott, supra at 180 n.2. This Board has similarly upheld BLM's refusal to allow oil and gas leasing in this same park area where BLM has the responsibility to make the final decision after review by the State pursuant to 43 CFR 3111.1-3(c)(3). See also Placid Oil Co., 76 IBLA 37 (1983).

The record shows that appellant's application was transmitted to the California State Department of Parks and Recreation December 7, 1982, for

consideration and comment. The State responded by letter of December 31, 1982, indicating opposition to the use of the parklands for mineral extraction. The State concluded the application should be denied, stating in pertinent part:

The presence of low-grade scheelite has been known and evaluated many times in previous years. The old workings on Sunrise Highway and near Jacumba were evaluated by the Mineral Specialist in your El Centro office several years ago and judged to be of non-economic importance. We shouldn't have to restudy and reevaluate these claims every few years unless there is some sort of national emergency or a new technology that would make these very low grade deposits economical to extract.

As the applicants mention, the roads are still remarkably good after 25 years. The desert is extremely slow to recover, as you know, so it should not be subjected to the prospect of new abuses every few years.

The presence of tourmaline in the Plum Canyon area of the park is also well known. Again, the deposits were worked many years ago and were abandoned because of their unimportance. Tourmaline hasn't been really economically important since the end of the last Chinese Dynasty (which made tourmaline the official jewel).

The record shows that BLM did not routinely accept this recommendation without further examination and analysis of its own. BLM conducted an independent review of the State's report to determine whether such mining activity could be compatible with park purposes, and whether the proposals could prove economical. 1/ From this review BLM confirmed the State's observations concluding: "It is clear that an economic case for development cannot be made at this time." 2/ BLM subsequently rejected the application by decision of January 20, 1984.

We find that the BLM decision to accept the recommendations of the California Department of Parks and Recreation is adequately supported by the record and consistent with the regulatory requirements of 43 CFR 3564.4. Appellant has not provided substantial evidence to persuade us that his proposed prospecting activities are economically worthwhile and would justify the possible disturbance of this park area. Accordingly, he has not shown error in the decision below.

1/ A memorandum from the California State Director to the California Desert District Manager, dated Nov. 2, 1983, requested an objective review of the State's recommendations against hard rock leasing in the Anza Borrego State Park.

2/ Memorandum from District Manager, California Desert, to California State Director, dated Nov. 29, 1983.

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 affirmed.

Franklin D. Arness
Administrative Judge

We concur:

R. W. Mullen
Administrative Judge

Will A. Irwin
Administrative Judge