

ASARCO, INC.

IBLA 79-580

Decided April 11, 1980

Asarco, Inc., appeals from decision of the Eastern States Office, Bureau of Land Management, canceling in part prospecting permit ES 17837.

Affirmed.

1. Administrative Authority: Generally -- Mineral Lands: Prospecting Permits

A hardrock prospecting permit erroneously issued for lands already subject to such a permit must be canceled to the extent of conflict.

2. Administrative Authority: Generally -- Estoppel -- Mineral Lands: Prospecting Permits

Reliance on incomplete records maintained by Federal land offices cannot confer upon a hardrock prospecting permittee any rights in derogation of a prior permittee.

APPEARANCES: Delbert D. Harper, ASARCO, Inc., Knoxville, Tennessee.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

ASARCO appeals the June 19, 1979, decision of the Eastern States Office, Bureau of Land Management (BLM), which canceled prospecting permit ES 17837 only as to the NW 1/4 sec. 31, T. 26 N., R. 2 W., fifth principal meridian, Missouri. The permit remained in effect as to the following lands: NE 1/4 sec. 3, T. 25 N., R. 2 W., fifth principal meridian, Missouri, and NE 1/4, S 1/2 SW 1/4 sec. 32 and N 1/2 sec. 33, T. 26 N., R. 2 W., fifth principal meridian, Missouri. BLM canceled the specified portion of this permit due to a conflict with another permit, ES 17620, issued effective April 1, 1979, which

included lots 1 and 2 of the NW 1/4 sec. 31, T. 26 N., R. 2 W., fifth principal meridian, Missouri. ^{1/} The ASARCO permit was granted May 3, 1979, effective June 1, 1979.

On appeal, ASARCO submits simply that "[a]t the time of our application we could find no evidence that the land in question was covered by a previous application."

[1] The issuance of a permit or lease appropriates the land to the extent of the permitted or leased use and subsequent applications for the same use of the land must be rejected. Cf. 43 CFR 2091.1; Stephen P. Dillon, 66 I.D. 148 (1959). Not until the relinquishment of a prior entry or permitted use has been noted on the tract books can the land become subject to further appropriation. Cf. 43 CFR 1825.1(b); State of Alaska, Kenneth D. Makepeace, 6 IBLA 58, 79 I.D. 391 (1972). Therefore, appellant's hardrock prospecting permit erroneously issued for lands already subject to such a permit was properly canceled to the extent of conflict.

[2] Appellant's assertion that it could find no evidence of the prior application affords no basis for relief. The applicable mineral status books currently reflect the existence of the prior permit. Whether the books showed this information when appellant filed its application is irrelevant. Even if they did not show this information, the appellant is not entitled to relief in derogation of the rights of a previous permittee. Regulation 43 CFR 1810.3(c) provides: "Reliance upon information or opinion of any officer, agent or employee or on records maintained by land offices cannot operate to vest any right not authorized by law."

^{1/} Land status information received from the Eastern States Office indicates that lots 1 and 2 embrace the entire NW 1/4 of sec. 31, totaling 157.80 acres. Therefore, the conflict is to the entire NW 1/4 subdivision. The lot numbers were established by a survey in 1869.

Accordingly, 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.

Joan B. Thompson
Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Douglas E. Henriques
Administrative Judge

