

JOHN W. JEWELL

IBLA 81-71

Decided March 16, 1981

Appeal from decision of the Eastern States Office, Bureau of Land Management, requiring execution of certain stipulations in connection with hardrock prospecting permit ES 11660.

Affirmed.

1. Mineral Lands: Prospecting Permits -- Mineral Leasing Act for Acquired Lands: Lands Subject to

An applicant for a prospecting permit on acquired forest lands must execute any special stipulations required by the Department of Agriculture as a condition precedent to the issuance of the permit, or suffer rejection of the offer.

APPEARANCES: John W. Jewell, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

John W. Jewell has appealed the decision of the Eastern States Office, Bureau of Land Management (BLM), dated September 11, 1980, requiring the execution of certain stipulations in connection with hardrock prospecting permit ES 11660.

In September 1979, BLM notified the French American Metals Corporation (FRAMCO), record title holder of hardrock prospecting permit, ES 11660, and appellant, royalty interest owner, that the Forest Service and Geological Survey had consented to the extension of permit ES 11660 and assignment to appellant conditioned upon appellant's acceptance of certain stipulations and payment of bond. Appellant appealed to this Board objecting to certain provisions of the stipulations. In July 1980, at the request of the Eastern States Office, we remanded the case to BLM because the Forest Service had submitted a set of less restrictive stipulations for the permit following completion of its Roadless

Area Review and Evaluation II (RARE II) study in North Carolina, the situs of the permit. The decision appealed herein requires the execution of these new stipulations as precondition to the issuance of the permit.

The stipulations include:

(1) A prospecting plan must be submitted to and approved in advance by the Area Mining Supervisor or his authorized representative;

(2) To qualify for a preference right lease for all or part of the land, the permittee must drill at least 6 adequate test holes or perform comparable prospecting in accordance with the approved plan for exploration and make discovery of a valuable deposit satisfactory to the Area Mining Supervisor on each tract of land under permit.

In addition, the BLM decision requires execution of a special stipulation, titled "Further Planning Area Stipulation," which would govern activities on the permit lands consistent with the RARE II findings until a decision is made as to whether to designate the lands as wilderness areas.

In his statement of reasons on appeal, appellant urges that no decision on issuing the permit be made until Congress determines the wilderness status of the areas involved. He argues that at this time stipulation No. 2 would require the expenditure of considerable money for exploration of the lands when he might then be denied a lease to exploit any discovery of a valuable mineral deposit because of a wilderness designation of the area. He also objects to the provision requiring discovery of a valuable deposit satisfactory to the area mining supervisor. He argues that he is a certified professional geologist, that engineers and geologists may differ on the economic feasibility of mining a particular mineral deposit, and that since he is the "risk taker," he should have the final word.

[1] It is well settled that the Secretary of the Interior may require the acceptance of special stipulations for the protection of public lands embraced by a permit or lease where the need for the stipulation is clear and the means to accomplish the intended purpose reasonable. Robert B. Schick, 34 IBLA 250 (1978); Bill J. Maddox, 22 IBLA 97 (1975); 43 CFR 3109.2-1. In the case of acquired lands under the administrative jurisdiction of the Department of Agriculture, however, the Secretary of Agriculture holds the authority to prescribe such stipulations as necessary to protect the purposes for which the lands were acquired. 16 U.S.C. § 520 note (1976); 43 CFR 3501.2-6(d). When an agency with such authority conditions its consent upon the execution of special stipulations, the applicant must sign them or suffer rejection of the application. See Sallie B. Sanford, 22 IBLA 289 (1975).

In response to appellant's urging that we delay a decision on issuance of this permit until after Congress determines the wilderness status of the area, we note that national forest wilderness lands are subject to mineral leasing to the same extent as nonwilderness forest lands through December 31, 1983, under the Wilderness Act of 1964, 16 U.S.C. § 1133(d)(3) (1976). After that date, the Act provides that, subject to valid existing rights, forest lands designated as wilderness areas will be withdrawn from disposition under the mineral leasing laws. See 36 CFR 293.14. It is not the responsibility of BLM to weigh the risks involved in the possible future designation of the permit lands as wilderness. Appellant initiated the permit extension request. If he now believes that the results of prospecting activities would not be worth the investment of his resources he may withdraw that request.

If appellant chooses to accept the stipulations required by the Forest Service, we direct that BLM issue a new prospecting permit to appellant since assignment and extension of the old permit for a period of 2 years from March 1, 1978, the date of expiration of the original permit, would leave him with no extension at all.

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.

Douglas E. Henriques
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Edward W. Stuebing
Administrative Judge

