

OZARK-MAHONING CO.

IBLA 83-218

Decided July 28, 1983

Appeal from delayed granting of extension to hardrock mineral prospecting permit ES 15126 by the Eastern States Office, Bureau of Land Management.

Set aside and remanded.

1. Mineral Lands: Prospecting Permits

Where, pursuant to 43 CFR Part 3510, BLM grants a 2-year extension to a hardrock mineral prospecting permit on certain acquired lands within a national forest, but delays approval of the extension until 17 months have elapsed after the expiration of the original permit, and then dates the extension from the terminal date of the original permit, the permit will be deemed to have been suspended during the period between the expiration date of the original permit and the granting of the extension, so that the permittee may have a full 2-year term for prospecting.

APPEARANCES: R. N. Diffenbach, Chief Geologist, for Ozark-Mahoning Company.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Effective July 1, 1979, the Eastern States Office, Bureau of Land Management (BLM), issued hardrock mineral prospecting permit ES 15126 to Ozark-Mahoning Company (Ozark). The lands involved are acquired lands within the Shawnee National Forest, Illinois. The initial expiration date of the prospecting permit was June 30, 1981. By letter dated May 28, 1981, appellant timely filed a request for extension of the permit. By a decision dated November 24, 1982, BLM extended permit ES 15126 for a period of 2 years from the expiration date of the original permit to June 30, 1983.

Ozark has appealed, arguing that mineral exploration is not allowed on lands covered by a prospecting permit during the period of time after expiration of the initial 2 years of the permit and prior to the grant of an extension. Therefore, appellant argues, the 2-year extension granted on November 24, 1982, and ending on June 30, 1983, reduces the additional 2-year period of exploration to a mere 7 months. Appellant requests that the date of expiration of the 2-year extension be changed to 24 months after the date of receipt of a favorable decision by this Board.

[1] In ASARCO, Inc., 70 IBLA 91 (1983), this Board ruled that an extension of a prospecting permit is a prolongation of the term of the previous interest, and so commences as of the expiration date of the primary term of the permit. The Board has reaffirmed this position in a more recent case, ASARCO, Inc., 72 IBLA 110 (1983). The latter case involved an inordinate delay by BLM in granting the extension of the permits from 9 to 19 months after expiration of the original permits, even though the applications for extensions were timely filed prior to expiration of the permits. In that case, the Board held that the permits should be treated as suspended during the interim from the expiration of the original permit to the date of the BLM decision granting the extension so as to allow a full 2-year period for additional prospecting. ASARCO, Inc., 72 IBLA at 111-12; see Leroy Pedersen, 56 IBLA 86, 88 I.D. 646 (1981). So, in this case, where there was an inordinate delay by BLM in granting the extension to the permit following receipt of the application, we direct BLM to consider permit ES 15126 as suspended from June 30, 1981, until November 24, 1982, the date the extension was granted, so that the permittee may conduct prospecting operations on the indicated lands until November 24, 1984.

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 set aside and the case is remanded to the Eastern States Office, Bureau of Land Management, for further action consistent with this opinion.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

James L. Burski
Administrative Judge