

LEE ROY NEWSOM ET AL.

IBLA 89-475

Decided February 13, 1991

Appeal from a decision of the Eastern States Office, Bureau of Land Management, rejecting prospecting permit application. ARES 39039.

Affirmed.

1. Withdrawals and Reservations: Generally

An unapproved prospecting permit application to prospect for quartz in the Ouachita National Forest in Arkansas is properly rejected where, by virtue of sec. 323 of P.L. 100-446, 102 Stat. 1774, 1827 (Sept. 27, 1988), all quartz deposits on acquired lands within the operation of Reorganization Plan No. 3 of 1946 in the forest were removed from and were made subject to disposition as common varieties under the Materials Act of 1947 (61 Stat. 681).

APPEARANCES: W. J. Jones, Jr., Caddo Gap, Arkansas, for appellants; William R. Murray, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Lee Roy Newsom, W. J. Jones, Jr., and Thomas C. Melton have appealed from a decision dated April 3, 1989, by the Eastern States Office, Bureau of Land Management (BLM), rejecting Newsom's prospecting permit application. 1/ On August 15, 1988, Newsom filed prospecting application ARES 39039, seeking a permit to prospect for quartz on 120 acres in sec. 11, T. 3 S., R. 24 W., fifth principal meridian, within the Ouachita National Forest, Arkansas.

BLM's decision rejected the application as null and void for the stated reason that under P.L. 100-446, 102 Stat. 1774, September 27, 1988, quartz became a salable mineral within the Ouachita National Forest and was no longer subject to entry and location under the General Mining Law of 1872.

1/ BLM actually declared the prospecting application null and void. However, the Department has traditionally found mining claims "null and void," has "cancelled" outstanding leases and permits, and has "rejected" applications for permits and leases. The correct terminology for the instant case is "rejection" of a permit application.

A notice of appeal dated May 8, 1989, was filed by W. J. Jones, Jr., on behalf of a partnership consisting of himself, Newsom, and Melton. 2/ Pertinent portions of P.L. 100-446 were filed with the notice of appeal and Jones indicated that a further statement of reasons would follow within 30 days. No such statement was ever filed.

BLM has filed an answer noting that no statement of reasons was ever received from appellants. BLM states that it filed its answer to the "general arguments set out in the Notice of Appeal." The notice of appeal contains only one paragraph purporting to be an argument. That paragraph states: "Enclosed is a copy of Public Law 100-446; Section 323 or 325? Please note the last section as to intent under H.R. 4867. This appeal has created an exigent situation for our mining partnership." The "last section" appellant refers to may be the last paragraph of an excerpt from a statement of Senator Dale Bumpers in support of H.R. 4867 which reads as follows: "Existing mining claims and existing leases would be grandfathered under applicable law. However, the Forest Service would be encouraged to provide claim holders with the opportunity to voluntarily convert claims in exchange for assured rights under the salable program."

BLM's answer analyzes pertinent provisions of P.L. 100-446, and contends that the legislation required rejection of the prospecting permit application.

Section 323(a) and (b) of P.L. 100-446 provides:

(a) Subject to valid existing rights, on the date of enactment of this section deposits of quartz mineral within the Ouachita National Forest in the State of Arkansas shall no longer be subject to location and entry under the General Mining Law of 1872 (17 Stat. 91), as amended, and all such deposits shall hereafter be disposed of under the same conditions as are applicable to the common varieties of mineral materials on such lands under the Materials Act of 1947 (61 Stat. 681), as amended: Provided,

2/ Proper application of the Department's rules of practice requires an affirmative showing that a representative of a named appellant is qualified and authorized to represent any other purported appellant or appellants. Under 43 CFR 1.3(b)(3) "[a]n individual who is not otherwise entitled to practice before the Department may practice in connection with a particular matter on his own behalf or on behalf of * * * (ii) A partnership of which he is a member." Where an unincorporated association (including a partnership) applies for a prospecting permit the partners must make a showing as to citizenship. Although the decision was issued to Newsom only, he indicated on his application that he was not the sole party in interest, and the file contains affidavits of citizenship for Jones and Melton. As a procedural matter, we consider these indicia of partnership sufficient to entitle Jones to bring the appeal on behalf of Newsom and Melton under 43 CFR 1.3(b)(3)(ii).

That fifty percent of the moneys received pursuant to this section shall be paid by the Secretary of the Treasury to the State of Arkansas, to be expended as the State may prescribe for the benefit of the public schools and public roads of the counties in which the Ouachita National Forest is situated.

(b) The Secretary of Agriculture shall prescribe rules and regulations for the disposal of quartz mineral from the Ouachita National Forest.

In its answer, BLM notes that the Ouachita National Forest contains both acquired and public domain lands, and describes how quartz deposits on such lands were administered prior to the Act:

Prior to the Act, quartz deposits on the public domain land were subject to location under the Mining Law of 1872, 30 U.S.C. § 22 et seq. Prior to the Act, quartz deposits on acquired land were subject to disposal by the Secretary of the Interior pursuant to Reorganization Plan No. 3 of 1946, 5 U.S.C. Appendix (1982). Under this authority BLM has issued regulations at 43 CFR Part 3560. These regulations authorized issuance of prospecting permits for hardrock minerals such as quartz on acquired national forest land where the existence or workability of such minerals is not known to exist. 43 CFR Subpart 3562.

While noting that several interpretations of the Act are possible, BLM concludes that section 323(a) of the Act "removes quartz deposits in the Ouachita National Forest on public land from the Mining Law and section 323(b) removes quartz deposits on acquired land from Reorganization Plan No. 3 of 1946 (and thus from 43 CFR Part 3560)." In support of its conclusion, BLM notes that Senator Dale Bumpers of Arkansas offered amendment 2106 to H.R. 4867 which was adopted as section 323 when H.R. 4867 became the Act. Speaking in support of the amendment, Senator Bumpers stated:

[M]y informal discussions with mining experts at the BLM and the Forest Service have led me to consider the simpler [than leasing] approach of making quartz a salable mineral. * * * The advantage of salable versus leasable disposition is that the Secretary of Agriculture exercises authority for mineral material disposals on national forest lands, whether public domain or acquired, thus streamlining the process because no Department of Interior involvement is required. * * * Existing mining claims and existing leases would be grandfathered under applicable law.

134 Cong. Rec. S9516 (daily ed. July 13, 1988).

We agree with BLM that the above remarks indicate that Senator Bumpers intended that paragraph(a) of section 323 applies to both public domain and

acquired land. Based upon BLM's analysis of the language of the Act and the legislative history cited in support thereof, we conclude that hardrock leasing of quartz deposits within the Ouachita National Forest is no longer possible.

As to the question of valid existing rights, the above remarks of Senator Bumpers include his statement that "[e]xisting mining claims and existing leases would be grandfathered under existing law." However, appellants in the case at hand had neither perfected a mining claim nor obtained a hardrock prospecting permit prior to enactment of the legislation. A prospecting permit application lends the applicant a hope or expectation and not a valid existing right. See Hannifin v. Morton, 444 F.2d 200, 203 (10th Cir. 1971). Since appellants had no valid existing rights, there was nothing to be protected by the Act.

Therefore, we conclude that BLM's rejection of appellants' prospecting permit application was proper.

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.

John H. Kelly
Administrative Judge

I concur:

James L. Burski
Administrative Judge