

SCOTT J. HILL

IBLA 91-25, 91-26

Decided April 2, 1993

Appeals from decisions of the Utah State Office, Bureau of Land Management, rejecting hardrock minerals prospecting permit application UTU-66551 in part and hardrock minerals prospecting permit application UTU-66552 in toto.

Affirmed.

1. Mineral Lands: Prospecting Permits

Lands, including mineral estates, which have never left the ownership of the United States are public domain lands and the patenting of public domain lands, with a reservation of the minerals, to a state pursuant to the Bankhead-Jones Farm Tenant Act of July 22, 1937, as amended, does not transform the retained mineral estate into acquired lands. BLM properly rejects a hardrock minerals prospecting permit for reserved public domain minerals where the regulations governing hardrock mineral leasing do not authorize the leasing of such public domain minerals.

APPEARANCES: Scott J. Hill, pro se.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Scott J. Hill has appealed from two September 6, 1990, decisions of the Utah State Office, Bureau of Land Management (BLM), rejecting hardrock minerals prospecting permit application UTU-66551 in part (IBLA 91-25) and rejecting hardrock minerals prospecting permit application UTU-66552 in toto (IBLA 91-26), respectively. Because these appeals present identical issues, we have consolidated them for review.

Prior to patenting, the lands at issue in this appeal were public domain lands administered by the Secretary of Agriculture. On February 23, 1956, the United States issued Patent No. 1157493 transferring the subject lands, among others, to the State of Utah, with a mineral reservation to the United States. According to the patent, the transferred lands had been selected by the State in lieu of certain tracts situated in the Central Utah Project which the State had reconveyed and relinquished to the United States pursuant to the provisions of section 32 of the Bankhead-Jones Farm Tenant Act of July 22, 1937, 50 Stat. 522. That Act authorized the Secretary of

Agriculture, inter alia, to acquire by purchase, gift, devise, or by transfer from any Federal agency or state, submarginal land and land not primarily suitable for agriculture and to dispose of such land to public authorities and agencies for use for public purposes. 50 Stat. 525-26.

Hill filed hardrock minerals prospecting permit application UTU-66551 on February 5, 1990, 1/ embracing 2,110.11 acres located in secs. 1, 11, 12, 13, 24, and 25, T. 9 S., R. 5 W., Salt Lake Meridian, Tooele County, Utah. On January 25, 1990, Hill filed hardrock minerals prospecting permit application UTU-66552, encompassing 240 acres situated in sec. 36, T. 9 S., R. 5 W., Salt Lake Meridian, Tooele County, Utah.

By separate decisions dated September 6, 1990, BLM rejected application UTU-66551 in part 2/ and application UTU-66552 in toto. In both decisions BLM explained that the rejected acreage had been transferred to the State of Utah under State Land Exchange Patent No. 1157493, with a mineral reservation to the United States, and that the reserved minerals were considered to be public domain minerals. Since the applicable provisions of 43 CFR 3560.3-1 limited the Department's authority to issue hardrock minerals prospecting permits to lands acquired by the Department of Agriculture, BLM determined that no such prospecting permits could be issued for the public domain minerals requested by Hill. 3/

In his statement of reasons (SOR) for appeal, Hill essentially argues that the minerals at issue are no longer public domain minerals. He contends that, since the patent to the State of Utah cites the Bankhead-Jones Farm Tenant Act as the authority for the transfer, the retained minerals have been converted from public domain minerals to acquired minerals because they were "acquired by the Secretary of the Interior from an agency of the United States [4/] to fulfill the purposes of the Bankhead-Jones Farm Tenant

1/ BLM rejected Hill's initial Jan. 24, 1990, submittal of this application for failure to include the back page of the application form on two of the three required copies. Hill corrected this deficiency and other errors in the application filed on Feb. 5, 1990.

2/ BLM indicated that its records concerning the remaining 397.69 acres did not show whether those lands had been acquired by the Forest Service, and stated that it would request a title report from the Forest Service to determine if those minerals had been acquired.

3/ BLM noted that the only regulatory provision authorizing hardrock minerals prospecting permits for public domain lands was 43 CFR 3560.3-1(d), which allows such permits for public domain lands within National Forests in Minnesota.

4/ Apparently Hill believes that, prior to the patenting of the land to the State of Utah, administration over the land was transferred from the Secretary of Agriculture to the Department of the Interior. Section 402 of Reorganization Plan No. 3 of May 16, 1946, 60 Stat. 1099, however, transferred to the Department of the Interior only those functions of the Secretary of Agriculture concerning the uses of mineral deposits in, inter alia, Bankhead-Jones Farm Tenant Act lands, not all functions relating to those lands.

Act of July 22, 1937, as amended" (SOR at unnumbered page 10). He asserts that the Act provides many ways in which lands may be acquired to further its purposes, including transfer from a Federal agency, and does not differentiate between lands based on the means of acquisition. Accordingly, Hill insists that BLM must treat all such lands the same regardless of original ownership and issue the requested hardrock minerals prospecting permits. 5/

[1] Prospecting permits for hardrock minerals are governed by the regulations found at 43 CFR Subpart 3560. BLM is authorized to issue a hardrock minerals prospecting permit for any area of available public domain and acquired lands subject to hardrock mineral leasing. 43 CFR 3562.1. The regulations at 43 CFR 3560.3 identify the lands subject to hardrock mineral leasing. See Thomas R. Frazier, 106 IBLA 43, 44 (1988). That list of available areas includes lands acquired pursuant to the Bankhead-Jones Farm Tenant Act of July 22, 1937, as amended. 43 CFR 3560.3-1(a)(5).

Although 43 CFR 3560.3-1(a)(5) limits the lands open to hardrock mineral leasing to acquired lands, and it is undisputed that the reserved minerals at issue here were originally public domain minerals, Hill argues that these minerals were transformed from public domain to acquired minerals when they were transferred from one Federal agency to another pursuant to the provisions of the Bankhead-Jones Farm Tenant Act of July 22, 1937. 6/ The applicable regulations, however, define public domain lands as "lands, including minerals estates, which have never left the ownership of the United States." 43 CFR 3500.0-5(f). Acquired lands, in contrast, are identified as "lands, including mineral estates, which are not public domain lands," which the United States has obtained by various means. 43 CFR 3500.0-5(g). Since the mineral estate at issue here has never left the ownership of the United States, it remains public domain land and is not subject to hardrock mineral leasing under 43 CFR 3560.3-1(a)(5). See John R. Meadows, 30 IBLA 14, 16 (1977). As BLM correctly noted, the only public domain lands subject to hardrock mineral leasing are public domain

5/ As an addendum to his SOR, Hill notes that by decision dated Oct. 18, 1985, BLM declared mining claims located on part of the subject lands null and void ab initio because no regulations existed for their location under the mining laws. He contends that this decision supports his claim that the minerals are no longer public domain minerals because if the minerals had remained in the public domain, they would have been locatable under the mining laws. This BLM decision, which was not appealed, is not binding on the Board. In any event, where public lands are disposed of with a reservation of minerals to the United States, the mining laws do not apply to those reserved mineral deposits in the absence of specific statutory disposal authorization. Richard G. Bradley, 89 IBLA 281, 283 (1985); City of Phoenix v. Reeves, 14 IBLA 315, 327-28, 81 I.D. 65, 70 (1974).

6/ We note that nothing in the record suggests that the subject lands were ever transferred from one Federal agency to another under the provisions of that Act. In any event, our resolution of this appeal does not depend on whether or not such a transfer occurred since it is undisputed that the retained minerals never left the ownership of the United States.

lands within National Forests in Minnesota. 43 CFR 3560.3-1(d). Accordingly, BLM has no regulatory authority to lease the minerals requested by Hill and properly rejected his hardrock minerals prospecting permit applications. See William Bade, 112 IBLA 312, 316 (1990).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

John H. Kelly
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge