



RON COLEMAN MINING, INC.

172 IBLA 387

Decided October 1, 2007



United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

RON COLEMAN MINING, INC.

IBLA 2007-234

Decided October 1, 2007

Appeal from a decision of the Deputy State Director, Division of Natural Resources, Eastern States Office, Bureau of Land Management, rejecting a renewal application for hardrock mineral lease ARES 36588.

Affirmed; petition for stay denied as moot.

1. Mineral Leasing Act: Generally

When the applicable regulations require that an application for renewal of a hardrock lease be filed at least 90 days prior to the expiration of the lease term and that the lease will expire on the last day of the lease term if no renewal application has been filed, BLM properly rejects a lease renewal application filed after expiration of the lease.

2. Estoppel--Federal Employees and Officers: Authority to Bind Government--Mineral Leasing Act: Generally

A statement by a BLM employee in a notice of expiration implying that a hardrock lease that has expired under applicable regulations may be renewed does not bind or estop BLM from rejecting a renewal application filed after that notice because the United States is not bound or estopped by the acts of its officers or agents when they enter into an arrangement or agreement to do or cause to be done what the law does not sanction or permit.

APPEARANCES: Kevin Coleman, Hot Springs, Arkansas, for Ron Coleman Mining, Inc.; Barbara B. Fugate, Esq., and Kendra Nitta, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Bureau of Land Management.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Ron Coleman Mining, Inc. (RCM), has appealed and petitioned for a stay of the April 30, 2007, decision of the Deputy State Director, Division of Natural Resources, Eastern States Office, Bureau of Land Management (BLM), rejecting its renewal application for hardrock mineral lease ARES 36588 because the lease had expired before the renewal application had been filed. The applicable regulations require that an application for renewal of a hardrock mineral lease be filed at least 90 days before the expiration of the lease term and provide that, absent a timely filed renewal application, a lease expires at the end of the lease term; RCM, however, did not file its renewal application until 27 days after the lease expired. Since we find no merit in any of RCM's arguments for overturning the decision, we affirm BLM's decision and deny RCM's petition for stay as moot.

Background

BLM issued hardrock mineral lease ARES 36588 to RCM's predecessor-in-interest, effective March 1, 1987, for a period of 20 years, with the preferential right to renew for successive 10-year periods under such terms and conditions as might be prescribed by the Secretary. The lease, which authorized the mining of quartz crystal deposits on 80 acres of land in the S½SE¼ sec. 4, T. 3 S., R. 24 W., 5th Principal Meridian, Montgomery County, Arkansas, within the Ouachita National Forest, stated that it was issued pursuant to and subject to "the regulations and general mining orders of the Secretary of the Interior in force and effect on the date this lease issued." Section 1, Lease ARES 36588, attached to BLM's Opposition to Petition for Stay Pending Appeal (Opposition) as Ex. C.¹

¹ The lease also stated that it was issued pursuant to Reorganization Plan No. 3, 60 Stat. 1099, 5 U.S.C. Appendix (1982), which transferred to the Secretary of the Interior the functions of the Secretary of Agriculture with respect to leasing of deposits on acquired or Weeks Act lands under the Act of March 4, 1917. Treatment of quartz crystal minerals changed on Sept. 27, 1988, with the enactment of sec. 323 of the Department of the Interior and related Agencies Appropriations Act of 1989, Pub. L. No. 100-446, 102 Stat. 1827 (1988), which prohibited mineral entry and leasing of quartz deposits in the Ouachita National Forest, subject to valid existing rights, and required all such deposits to be disposed of "under the same conditions as are applicable to common varieties of mineral materials on such lands under the Materials Act of 1947 (61 Stat. 681), as amended[, 30 U.S.C. §§ 601-603 (2000)]." See *Ron Coleman Mining, Inc.*, 168 IBLA 252 (2006), for a thorough discussion of the history of this hardrock mineral lease and the authority for and regulation of quartz crystal leasing. In that case, the Board set aside BLM's rejection of RCM's 1998 proposed mining plan of operations and remanded the matter. On remand, BLM and the Forest Service prepared an environmental assessment (EA) for the proposed plan, which they circulated for public comment in mid-March 2007. No comments were

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The initial 20-year period for the lease expired on February 28, 2007, without receipt by BLM of an application for renewal of the lease. By electronic mail message dated March 23, 2007, BLM informed RCM that the lease had expired on February 28, 2007. Citing the current regulations, 43 C.F.R. § 3511.27 (“How do I renew my lease?”) and § 3000.12 (“What is the fee schedule for fixed fees?”), BLM advised RCM that if it planned on renewing the lease, it should send the fees and application to BLM’s Eastern States Office. RCM responded electronically that same day, stating that it would like to renew the lease and would send the fees and application on the following Monday. On March 26, 2007, BLM notified RCM electronically of the updated fees for lease renewal, and RCM immediately sent BLM the renewal application and fees.

By decision dated April 30, 2007, the Deputy State Director rejected RCM’s lease renewal application. While recognizing that RCM’s attempt to renew the lease had likely been prompted by BLM’s March 23, 2007, electronic mail correspondence, indicating that lease renewal was possible, he stated that BLM did not have the authority to renew a lease after it had expired. Citing the 1986 regulations in effect when the lease was issued, the Deputy State Director concluded that the lease had expired on February 28, 2007, at the end of the lease term due to RCM’s failure to submit a lease renewal application at any time prior to that date.² RCM timely appealed the Deputy State Director’s decision.

Applicable Law

[1] The regulations controlling the disposition of this appeal are found at 43 C.F.R. Parts 3500 and 3560 (1986). Under 43 C.F.R. § 3509.3-2(a) (1986), a hardrock lease “shall expire either at the end of the lease term, if a timely application for lease renewal is not timely filed in accordance with applicable regulations or at the time a timely application for renewal is rejected.” The applicable regulation governing applications for hard rock lease renewal, 43 C.F.R. § 3566.1 (1986), provides that

[a]n application for lease renewal shall be filed at least 90 days prior to the expiration of the lease term. No specific form is required. All

¹ (...continued)

received by the close of the comment period on April 10, 2007, and no further action has been take on the proposed plan of operations. See Opposition at 3-4, 9-10.

² The Deputy State Director also advised RCM that BLM no longer had the authority to issue new leases for quartz crystals in the Ouachita National Forest, citing sec. 323 of the Department of the Interior and related Agencies Appropriations Act of 1989, Pub. L. No. 100-446, 102 Stat. 1827 (1988).

applications shall be filed in triplicate in the proper BLM office together with a nonrefundable \$25 filing fee and an advance rental payment of \$1 per acre or fraction thereof. The rental payment shall not be less than \$20.

The regulations further specify that, “[i]f the holder of a lease fails to apply for renewal as provided in § 3566.1 of this title, the lease shall expire on the last day of the lease term.” 43 C.F.R. § 3566.3 (1986).

Discussion

RCM did not file an application for lease renewal 90 days prior to the expiration of the lease term on February 28, 2007, nor did it file a renewal application at any time before that date. Based on those facts, BLM denied RCM’s renewal application. RCM offers three grounds for reversal of that decision.

First, RCM challenges the jurisdiction of Steven J. Gobat, the signatory of the appealed decision, to issue the decision. RCM asserts that, while the title Deputy State Director appears below Gobat’s name, he did not identify his BLM State Office. RCM states that, according to its research, Gobat at one time served in that capacity in BLM’s Arizona State Office and is now retired and that, since the lease at issue is located within the jurisdiction of the Eastern States Office, not the Arizona State Office, Gobat had no jurisdiction to issue the decision. In response, BLM points out that the letterhead stationary on which the decision was printed clearly identifies the BLM’s Eastern States Office as the originating office for the decision. BLM explains that Gobat served as the Deputy State Director, Division of Natural Resources, of that office through April 30, 2007, and signed the appealed decision as one of his last official acts. Given the letterhead’s identification of the issuing State Office and BLM’s explication of Gobat’s employment status, we find no merit in RCM’s challenge to Gobat’s authority to issue the appealed decision.

RCM characterizes its second argument as one of common sense. It asserts that it met with BLM and Forest Service representatives onsite in December 2006, well within the 90 days prior to lease expiration, to discuss its proposed multi-year mining plan of operation, and that this meeting should have made its intent to renew the lease obvious. It submits that, since no specific application form is required under the regulations, the December 2006 meeting could be construed as the equivalent of filing an application in triplicate. It further contends that BLM knew that RCM would be occupied in January and February 2007, and that BLM’s March 2007 electronic correspondence should be interpreted as a waiver of the timely filing requirement, especially since BLM was still treating the lease as active 2 weeks after the end of the lease term when it circulated the mining plan EA for comment.

There are several critical flaws to this argument. First, the meeting with BLM and Forest Service personnel is not the equivalent of filing an application in triplicate. The applicable regulation, 43 C.F.R. § 1821.2-2(f) (1986), provides that “filing is accomplished when a document is delivered to and received by the proper [BLM] office.” See also 43 C.F.R. § 1822.11. Meeting with BLM personnel clearly is not comparable to delivering a renewal application to the proper BLM office, especially since RCM does not assert, much less establish, that it delivered any renewal document to BLM personnel at the meeting or that lease renewal was even discussed at that time. Additionally, the regulations require the filing of not just a renewal application, but also the requisite fees, and RCM admits that it did not file the fees until after it received BLM’s March 26, 2007, electronic mail setting out the amount of those fees. See Appeal at unnumbered p. 2. Accordingly, we reject RCM’s assertion that the December 2006 meeting should be considered tantamount to filing a timely renewal application.

[2] Second, to the extent RCM’s “common sense” argument can be construed as raising a claim of waiver or estoppel, that argument has no merit. The Board has well-established precedent governing when estoppel is applicable against the Government. See *Dan Adelman*, 169 IBLA 13, 17 (2006), and cases cited. To establish a claim of estoppel, an appellant must show that (1) BLM knew the true facts; (2) that BLM intended its conduct to be acted upon or so acted that the appellant had right to believe it was so intended; (3) that the appellant was ignorant of the true facts; and (4) that the appellant detrimentally relied on BLM’s conduct. *Ptarmigan Co.*, 91 IBLA 113, 117 (1986), *aff’d sub nom. Bolt v. United States*, 944 F.2d 603 (9th Cir. 1991), and cases cited; see also *Dean Staton*, 136 IBLA 161, 163 (1996).

In addition, estoppel against the Government in matters concerning the public lands is an extraordinary remedy, and must be based upon affirmative misconduct, such as misrepresentation or concealment of material facts. *United States v. Ruby Co.*, 588 F.2d 697, 703-04 (9th Cir. 1978). Oral misstatements cannot support a claim of estoppel; reliance must be predicated on a crucial misstatement in an official written decision. *Dan Adelman*, 169 IBLA at 18; *Mineral Hill Venture*, 155 IBLA 323, 330 (2001); *Kenneth Lexa*, 138 IBLA 224, 230 (1997); compare *Leitmotif Mining Co.*, 124 IBLA 344, 347-48 (1992), with *Martin Faley*, 116 IBLA 398, 402 (1990). Moreover, estoppel will not lie if the effect of such action would be to grant a person an interest not authorized by law. *Dan Adelman*, 169 IBLA at 18; *Alfred G. Hoyle*, 123 IBLA 194A, 194V, 100 I.D. 34, 44-45 (1993), *aff’d*, 927 F. Supp. 1411 (1996), *aff’d*, 129 F.3d 1377 (10th Cir. 1997); see also 43 C.F.R. § 1810.3(c). Finally, all persons dealing with the Government are presumed to have knowledge of relevant statutes and regulations. *Federal Crop Insurance Corp. v. Merrill*, 332 U.S. 380, 384-85 (1947); *Dan Adelman*, 169 IBLA at 18; *Lester W. Pullen*, 131 IBLA 271, 273 (1994).

In this case, RCM relies on the electronic correspondence from BLM regarding lease renewal, which clearly intimated that RCM could still apply for lease renewal by filing the application and fees and asked RCM to respond with its intentions regarding the lease. BLM's suggestion that a lease renewal application could still be filed was wrong.

However, even if that suggestion could be considered to be a crucial misstatement in an official written decision, estoppel would not apply for several reasons. First, the regulations state at 43 C.F.R. § 1810.3(b) that “[t]he United States is not bound or estopped by the acts of its officers or agents when they enter into an arrangement or agreement to do or cause to be done what the law does not sanction or permit.” *See also* 43 C.F.R. § 1810.3(a) (“The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or agents, or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.”). Since the law did not allow renewal applications to be filed after the lease expired, but, to the contrary, required that the applications be filed at least 90 days before lease expiration, any agreement or arrangement to the contrary cannot be the basis for estoppel.

RCM also cannot claim ignorance of the regulatory requirement that a renewal application must be filed at least 90 days before lease expiration and of the consequences of the failure to do so. The applicable regulations clearly state that “[a]n application for lease renewal shall be filed at least 90 days prior to the expiration of the lease term,” 43 C.F.R. § 3566.1 (1986), and that, “[i]f the holder of a lease fails to apply for renewal as provided in § 3566.1 of this title, the lease shall expire on the last day of the lease term.” 43 C.F.R. § 3566.3 (1986). All members of the public are deemed to have constructive knowledge of all Federal statutes and regulations. *Federal Crop Insurance Corp. v. Merrill*, 332 U.S. at 384-85; *Lamar & Christine Burnett*, 153 IBLA 215, 222 (2000). Additionally, approval of RCM's estoppel claim would grant him a right not authorized by law by allowing him to renew a lease after the lease had expired in contravention of 43 C.F.R. § 3509.3-2(a) and § 3566.3 (1986). *See Dan Adelman*, 169 IBLA at 18; *Lamar & Christine Burnett*, 153 IBLA at 223. We therefore reject RCM's second argument.

In its third and final argument on appeal, RCM denies that BLM lacks the authority to renew the lease, citing 43 C.F.R. § 1822.15. Under 43 C.F.R. § 1822.15, BLM may consider an otherwise untimely document or payment as timely filed if “(a) [t]he law does not prohibit BLM from doing so; (b) [n]o other BLM regulation prohibits doing so; and (c) [n]o intervening third party interests or rights have been created or established during the intervening period.” RCM also relies *BHB Oil Co.*, 157 IBLA 187 (2002), in which the Board found that nothing in the law barred BLM from accepting untimely-filed oil and gas lease renewal forms. RCM asserts that its failure to file a timely lease renewal application was an honest mistake caused by its

busy schedule in February and that it in good faith got the check and formal application to BLM within 4 days of receipt of the electronic mail informing it of the lease's expiration. RCM asks that BLM use its authority under 43 C.F.R. § 1822.15 to consider the application timely filed so that it can begin mining under its approved plan.³

BLM responds that the regulations do not allow lease renewals after lease expiration, citing 43 C.F.R. § 3509.3-2(a) and § 3566.3 (1986), which explicitly provide that the lease expires at the end of the lease term if a timely renewal application has not been filed. BLM therefore maintains that neither 43 C.F.R. § 1822.15 nor 43 C.F.R. § 1821.1-2(g) (1986) gives it the authority to consider RCM's renewal application timely because the law specifically prohibits it from doing so.⁴

We agree with BLM. Both 43 C.F.R. § 3509.3-2(a) and § 3566.3 (1986) clearly state that a lease expires at the end of the lease term if a timely renewal application has not been filed. Once a lease expires, there is nothing in existence for BLM to renew. *Cf.*, *Harvey E. Yates Co.*, 156 IBLA 100, 105 (2001) (once a lease expires, there is nothing for the Department to suspend), and cases cited. The law therefore does not permit BLM to consider RCM's lease renewal application as timely.

The situation in *BHB Oil Co.*, cited by RCM, is readily distinguishable from the circumstances here. In *BHB Oil Co.*, BHB filed a timely oil and gas lease renewal application. In response, BLM sent BHB lease renewal forms for execution. When BHB did not sign and return those forms within the time period set by BLM, BLM rejected the renewal application. The Board applied 43 C.F.R. § 1822.15, holding that nothing in the applicable statute or regulations dictated that failure to submit

³ Although RCM characterizes its proposed mining plan as already approved, BLM points out that no decision has yet been issued regarding the plan. *See* Opposition at 9-10.

⁴ BLM points out that 43 C.F.R. § 1821.2-2(g) (1986) contained substantially the same language as 43 C.F.R. § 1822.15 but without the specific reference to regulations as well as law. BLM asserts that the preamble to the current regulation clarifies that the addition of the subsection addressing regulations was merely a technical change and was not intended to impose a new substantive requirement, citing 64 Fed. Reg. 53,213, 53214 (Oct. 1, 1999). *See also* 62 Fed. Reg. 51402, 51403 (Oct. 1, 1997) (preamble to proposed regulations). We agree that the term "law" as used in the prohibition against accepting untimely documents as timely filed if "[t]he law does not permit [the authorized officer] to do so" set forth in 43 C.F.R. § 1821.2-2(g)(1) (1986) encompasses regulations as well as statutes and decisional law.

timely lease renewal forms must result in the rejection of the renewal application. *BHB Oil Co.*, 157 IBLA at 190. In RCM's case, the applicable regulations not only clearly set out the time frame for submitting a renewal application but also mandate the consequences of a failure to comply with that time frame. Accordingly, we conclude that 43 C.F.R. § 1822.15 does not give BLM the authority to consider RCM's untimely lease renewal application as timely filed.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed and the petition for stay is denied as moot.

Bruce R. Harris
Deputy Chief Administrative Judge

I concur:

H. Barry Holt
Chief Administrative Judge