

INTERIOR BOARD OF LAND APPEALS

Equity AU, Inc.

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EQUITY AU, INC.

IBLA 94-7

Decided January 19, 1996

Appeal from a decision of the Eastern States Office, Bureau of Land Management, rejecting three hardrock prospecting permit applications. ARES 45002, ARES 46003, ARES 46004.

Vacated and remanded.

1. Mineral Lands: Prospecting Permits

Under 43 CFR 3560.3-1, consent of the Secretary of Agriculture is necessary for hardrock mineral leasing on national forest lands acquired under the authority of the Act of Mar. 1, 1911, ch. 186, 36 Stat. 961-963. However, where, at the time of the filing of hardrock prospecting permit applications, the surface of such lands has been exchanged and is held in private ownership, leaving only the mineral interest in Federal ownership, 43 CFR 3560.3-1 is no longer applicable and the consent of the Secretary of Agriculture is not necessary for approval of those applications.

APPEARANCES: Kingman L. Hitz, President and CEO, Equity AU, Inc., Dallas, Texas, for appellant.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Equity AU, Inc., has appealed from an August 27, 1993, decision of the Eastern States Office, Bureau of Land Management (BLM), rejecting hardrock prospecting permit applications ARES 45002-45004 to prospect for gold and other precious minerals on three tracts of lands within the boundaries of the Ouachita National Forest in Polk County, Arkansas. 1/

The Forest Service acquired the surface and minerals of the three tracts of land in question in 1937 under the authority of the Act of March 1, 1911, ch. 186, 36 Stat. 961-963. 2/ Prospecting, development,

1/ The record shows those tracts to be Tract No. 3286, Tract No. 5482d, and Tract No. 5482e, described, respectively as the N $\frac{1}{2}$ N $\frac{1}{2}$ sec. 9, SE $\frac{1}{4}$ SW $\frac{1}{4}$ sec. 9, and NE $\frac{1}{4}$ NW $\frac{1}{4}$ sec. 10, all within T. 3 S., R. 31 W., Polk County.

2/ That act, popularly known as the Weeks Law or Weeks Act, is classified to sections 480, 500, 513-519, 521, 552 and 563 of 16 U.S.C.

and utilization of the mineral resources acquired under that Act was authorized by the Act of March 4, 1917, as amended, 16 U.S.C. § 520 (1994), under such terms and conditions as the Secretary of Agriculture deemed appropriate. However, in 1946, under section 402 of Reorganization Plan No. 3, 60 Stat. 1099, Congress transferred the functions of the Secretary of Agriculture with respect to uses of mineral deposits under the Act of March 4, 1917, to the Secretary of the Interior, with the proviso that

mineral development of such lands shall be authorized by the Secretary of the Interior only when he is advised by the Secretary of Agriculture that such development will not interfere with the primary purposes for which the land was acquired and only in accordance with such conditions as may be specified by the Secretary of Agriculture in order to protect such purposes.

During 1986 and 1987, the Forest Service exchanged the surface of the three tracts for other lands. The minerals, however, remained under Federal ownership. Equity AU is presently the owner of the surface of the three tracts.

BLM rejected the applications citing 43 CFR 3560.3-1, and stating that

the surface is privately held and, therefore, the Forest Service has no authority to consent to leasing on surface they do not administer even though the lands are within the proclaimed boundary of a national forest. Without Forest Service consent we are without authority to issue the subject prospecting permits. [3/]

Thus, BLM determined that Forest Service had no authority to consent, but that without Forest Service consent, it could not approve the applications. As described by Equity AU, this presented a classic "catch 22" situation. For the reasons stated below, we vacate BLM's decision.

A memorandum to the file, dated April 23, 1993, details the results of an inquiry by BLM of the Forest Service regarding the applications.

3/ That regulation, which is titled "Department of Agriculture lands," provides:

"With the consent of the Secretary of Agriculture and subject to such conditions as he/she may prescribe, the hardrock minerals in the following lands administered by the Secretary of Agriculture are subject to lease:

"(a) Lands acquired pursuant to the laws set out in Reorganization Plan No. 3 of 1946: (1) The Act of March 4, 1917 (39 Stat. 1134; 16 U.S.C. 520) * * *"

We note the inartful language of this regulation. The Act of Mar. 4, 1917, was not an act authorizing the acquisition of land for national forests. Rather, it merely authorized the exploitation of minerals in lands acquired under the Weeks Act. However, it is clear that 43 CFR 3560.3-1 finds its genesis in section 402 of Reorganization Act No. 3.

That memorandum states: "Contacted the Forest Service. They would not 'approve' because BLM is the agency overseeing the Federal mineral estate. Their position was they have no authority to approve or disapprove of issuance of the prospecting permit applications when the surface is not within their jurisdiction."

[1] Under 43 CFR 3560.3-1, consent of the Secretary of Agriculture is necessary for hardrock mineral leasing on national forest lands acquired under the Weeks Act. The purpose of requiring consent may be gleaned from reading section 402 of Reorganization Plan No. 3. That section provides that mineral development may be approved by the Secretary of the Interior only after the Secretary of Agriculture determines that such development will not interfere with the "primary purposes for which the land was acquired" and only with such conditions, as specified by the Secretary of Agriculture, "in order to protect such purposes."

The purposes of the Weeks Act were to authorize the acquisition of forested, cut-over, or denuded lands within the watersheds of navigable streams when their control by the Federal Government would promote or protect the navigation of streams or promote the production of timber on such lands. See 43 U.S.C. § 515 (1988). Thus, while transferring jurisdiction over the mineral estate in Weeks Act lands from the Secretary of Agriculture to the Secretary of the Interior, Congress sought to reserve in the Secretary of Agriculture, as the administrator of the surface estate, the authority to ban mineral development of such lands where it would interfere with the purposes for which the land was originally acquired or control such development in order to protect those purposes.

In this case, the surface of the Weeks Act lands was exchanged in 1986 and 1987. In authorizing the exchange, the Secretary of Agriculture obviously concluded that the lands were no longer necessary for the purposes for which they were acquired. Thus, by exchanging those lands, the Secretary of Agriculture, in essence, relinquished the authority to disapprove or control mineral development of the underlying mineral estate.

In 1993, when Equity AU filed its permit applications, the surface of the tracts was no longer Federally owned and, therefore, the tracts were not "lands administered by the Secretary of Agriculture" within the meaning of 43 CFR 3560.3-1. For that reason, we conclude that 43 CFR 3560.3-1 is not applicable in this case. Since it is not applicable, the consent of the Secretary of Agriculture is not required. ^{4/} Section 402 of

^{4/} The regulations in 43 CFR Part 3500 define "acquired lands" as including mineral estates which the United States obtained through purchase. Under 43 CFR 3500.9-1(b), acquired lands may only be permitted "with the written consent of the head or other appropriate official of the surface management agency." Again, this regulation is not applicable because there is no surface management agency for the three tracts in question.

Reorganization Act No. 3 provides authority for the Secretary of the Interior, through his designee, BLM, to permit or lease the acquired mineral estate.

BLM's conclusion that it had no authority to issue the subject prospecting permits in this case without Forest Service consent is error. No consent is required. Accordingly, we vacate BLM's decision and remand the case to it for its consideration of the applications under 43 CFR Subpart 3562.

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 vacated and the case is remanded for action consistent with this opinion.

Bruce R. Harris
Deputy Chief Administrative Judge

I concur:

R. W. Mullen
Administrative Judge