

File Code: 1570; 2850

Date: October 28, 1997

Mr. J. Dennis Stacey  
President  
Spruce Sand & Gravel, Inc.  
P.O. Box 91219  
Anchorage, Alaska 99509-1219

RE: Alaska Regional Forester decision of April 15, 1997, and Appeal No. 97-13-00-0068-A251

Dear Mr. Stacey:

This is my decision on the appeal you filed on May 31, 1997, on behalf of Pelham L. Jackson, Spruce Sand & Gravel, and yourself pursuant to 36 CFR 251.100. Your appeal seeks review of an April 15, 1995, decision by Regional Forester Phil Janik. His decision directed that a plan of operations that you filed to mine stone on mining claims located over the Spencer Glacier material sale site on the Glacier Ranger District be returned to you. The Regional Forester's decision was predicated upon his conclusion that the stone was not locatable, and therefore not subject to the United States mining laws and Forest Service Regulations at 36 CFR Part 228, Subpart A. Rather, the Regional Forester concluded 36 CFR Part 228, Subpart C, classified the stone as a common variety mineral material subject to sale by the Forest Service pursuant to the Materials Act of 1947.

As part of my review, I have considered the arguments you presented on behalf of Spruce Sand & Gravel, Inc., in Parts 1 and 2 of appeal documents dated May 31, 1997, and July 23, 1997, respectively, and in the written statement and oral presentation given in Washington, D.C., on September 10, 1997. I have also thoroughly examined the Alaska Region's responsive statement, including appended documents, dated July 3, 1997.

The relief requested in your notice of appeal is reversal of the Regional Forester's decision, and retroactive approval of your proposed plan of operations. You also request that mining claimants be given the right to trigger a validity examination by the Department of the Interior if the Forest Service will not acknowledge the validity of mining claims. In your July 23, 1997, reply to the Regional Forester's responsive statement you also request additional relief.

You contend that because the Spencer quarystone is currently used as armor stone, toe stone, and filter stone in the construction of a revetment on the Homer Spit by the U.S. Army Corps of Engineers, the quarystone has unique characteristics qualifying it as an uncommon mineral subject to location under the general Mining Laws. A careful review, however, of a Corps of Engineers report, dated December 16, 1987 (Spruce appeal, Part 1, Exhibit 8), giving results of tests on the Spencer quarystone that was considered for the Homer project, specifically states the intended use of the material is "riprap". In its *Shore Protection Manual, v. II*, dated 1984; Engineer Technical Letter No. 1110-2-120, dated May 14, 1971; and Engineer Manual No. 1110-2-1601, dated June 30,

1994, the Corps indicates that the basic difference between riprap and armor stone is size and method of placement. The Corps' riprap is generally placed randomly on an embankment; armor stone is normally heavier and geometrically shaped to aid in individual placement as an outer, protective facing. In effect, armor stone and other specifically named stones used in the construction of the Homer revetment and supplied by Spruce may be generically classified as riprap.

A recent definition of riprap given in the *Dictionary of Mining, Mineral, and Related Terms* and released by the U.S. Bureau of Mines in 1996 follows:

**rip**rap (a) A layer of large, durable fragments of broken rock, specially selected and graded, thrown together irregularly (as offshore or on a soft bottom) or fitted together (as on the upstream face of a dam) . . . . (b) The stone used for riprap . . . . "

I find that the definitions for riprap applied by the Bureau of Mines and the Corps of Engineers are complimentary and in no way suggest unique or uncommon mineral characteristics. Additionally, the U.S. Geological Survey in its 1995 annual report on stone tabulated large tonnages of limestone, dolomite, granite, traprock, sandstone, quartzite, and miscellaneous stone . . . as a source of coarse aggregate for riprap and jetty stone. I find therefore that the Spencer quarrystone is a construction material as defined by 36 CFR 228.41 (c)(4), and more specifically is properly classified by use as riprap.

The Regional Forester's responsive statement to your notice of appeal and your reply to the Regional Forester's responsive statement both state that an examination of the validity of the mining claims at issue is being conducted because the lands encompassed by those claims have been segregated. If the report concludes that one or more of your mining claims does not have a discovery of a valuable mineral deposit, the Forest Service will request the Bureau of Land Management to initiate a mineral contest to conclusively determine the validity of such claims. If the report concludes that one or more of your mining claims has a valuable mineral deposit, the Forest Service will permit Spruce to conduct reasonable operations to mine the locatable mineral deposits on those claims. Thus there is a process underway which will ensure that Spruce will obtain one element of the requested relief.

As to your request that I reverse the substance of the Regional Forester's decision that the stone on your mining claim is common variety, not subject to disposal under the United States mining laws, I find the decision to affirm the previous classification and regulation of the Spencer Quarry stone as a salable mineral material to be consistent with the Materials Act of 1947, 30 U.S.C. § 601.

This review further leads me to find that the stone mined and marketed by Spruce Sand and Gravel at the Spencer Quarry is common construction material covered by Forest Service regulations under 36 CFR 228, Subpart C, and more specifically at Paragraph 228.41 (c)(4) rather than at Paragraph 228.41 (d)(7). The Spruce stone is appropriately categorized as crushed or broken rock used for riprap and similar construction purposes. This finding negates the application of Paragraph 228.41 (e)(2) in regulating Spruce's quarrystone.

I affirm the Regional Forester's decision.

This decision is the final administrative determination of the Department of Agriculture on this appeal unless the Secretary of Agriculture exercises discretion to review the decision. The Secretary

has 15 calendar days from the date of receipt of the decision to decide whether or not to exercise his discretionary review authority, 36 CFR 251.100 (c).

Sincerely,

/s/ Lyle Laverty

LYLE LAVERTY  
Director - Recreation, Heritage, and Wilderness Resources  
Appeal Reviewing Officer for the Chief