

LARRY SAKIN

IBLA 72-485

Decided June 29, 1973

Appeal from a decision of the New Mexico State Office, BLM, requiring rent to be paid prior to the issuance of sulphur prospecting permit NM 5852.

Affirmed.

Mineral Lands: Prospecting Permits

The filing of a sulphur prospecting permit application under the Act of April 17, 1926, as amended, 30 U.S.C. § 271 (1970), does not vest in the applicant any rights which preclude the Department from requiring, under regulations adopted after such filing, that a first year's rental be paid prior to issuance of the permit.

APPEARANCES: Larry Sakin, pro se.

OPINION BY MR. GOSS

Larry Sakin has appealed from a New Mexico State Office, Bureau of Land Management, decision dated May 18, 1972, requiring the first year's rental to be paid prior to the issuance of a sulphur prospecting permit.

Appellant filed a prospecting permit application NM 5852 on April 26, 1968, pursuant to the Act of April 17, 1926, as amended, 30 U.S.C. § 271 (1970), which authorizes the Secretary of the Interior "under such rules and regulations as he may prescribe" to grant permits to prospect for sulphur in lands belonging to the United States located in Louisiana and New Mexico.

At the time appellant filed his application there was no regulation requiring that rental payment accompany the application. Subsequently, a regulation was promulgated which requires such payment. The regulation, 43 CFR 3503.3-1(a), formerly 43 CFR 3182.1(b) (33 F.R. 15946, October 30, 1968), reads in part:

(a) Permits (Prospecting). A prospecting permit application must be accompanied by full payment of the first year's rental at the rate of 25 cents per acre or fraction thereof, but no less than \$ 20 per year, the rental payment to be for the total acreage if known, and if not known, for the total acreage computed on the basis of 40 acres for each smallest subdivision. \* \* \*

On the effective date of the regulation appellant had not been issued a permit. Thereafter, the State Office decision apprised appellant that rent was required in the sum of \$ 160, that he had 30 days from receipt of the decision to pay such rent and that failure to comply would result in rejection of the application.

Appellant contends that the regulation was not in effect at the time his application was filed and that it should not be applied retroactively.

The filing of a sulphur prospecting permit application under the Act of April 17, 1926, as amended, 30 U.S.C. § 271 (1970), does not vest in the applicant any rights which preclude the Department from requiring, under regulations adopted after the date of such filing, that an annual rental be imposed upon the permit and that payment of the first year's rental be made prior to issuance of such permit. Billy Stewart, NM 4200 etc. (April 8, 1969), approved by the Secretary of the Interior (May 2, 1969), aff'd sub nom. Hannifin v. Morton, 444 F.2d 200 (10th Cir. 1971). The imposition of similar rental requirements for prospecting permits for other minerals subject to the Mineral Leasing Act, 30 U.S.C. §§ 181 et seq. (1970), has also been sustained by the Department. E.g., Clarence E. Felix, A-30197 (January 7, 1965) (coal); Roy W. Swenson, 67 I.D. 448 (1960) (potassium). Cf. Miller v. Udall, 317 F.2d 573 (D.C. Cir. 1963).

No rights having vested in appellant merely by his filing of a prospecting permit application, the State Office acted properly in enforcing the regulation to require the rental payment. Because such rental payment was not made within the time allowed, the application was correctly rejected.

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.

Joseph W. Goss, Member

We concur:

Frederick Fishman, Member

Douglas E. Henriques, Member

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