

WILLIAM F. MARTIN

IBLA 76-333

Decided March 30, 1976

Appeal from decision of the Montana State Office, Bureau of Land Management, rejecting in part or in their entirety phosphate prospecting permit applications M 31584 through M 31586.

Affirmed.

1. Applications and Entries: Vested Rights -- Mineral Lands:
Determination of Character of -- Phosphate Leases and Permits:
Permits

The filing of a phosphate prospecting permit application creates no vested rights in the applicant, and the application must be rejected if the land described therein is determined to be subject to the competitive leasing provisions of the Mineral Leasing Act. Rejection is required even if the application was filed prior to the ascertainment of the extent or workability of the phosphate bed underlying the applied for land, which finding requires competitive leasing of the land.

2. Administrative Procedure: Burden of Proof -- Geological Survey -- Mineral Lands: Determination of Character of -- Phosphate Leases and Permits: Permits

Applications for phosphate prospecting permits are properly rejected by the Bureau of Land Management upon the basis of a determination by the Geological Survey that the lands applied for contain workable deposits of phosphate thus making the lands subject to

the leasing provisions rather than the prospecting provisions of the Mineral Leasing Act. A review of the technical data relied upon by the Geological Survey in making its determination is not required where no evidence is submitted on appeal demonstrating error in that determination.

APPEARANCES: William F. Martin, pro se.

OPINION BY ADMINISTRATIVE JUDGE RITVO

William F. Martin has appealed from a decision of the Montana State Office, Bureau of Land Management, dated October 28, 1975, rejecting in toto phosphate prospecting permit applications M 31584 and M 31586 and rejecting in part phosphate prospecting permit application M 31585. The State Office gave the following reason as the basis for its decision:

The permit applications are rejected entirely or in part for the reason that Geological Survey records disclose that the extent and workability of the phosphate beds on these lands have been determined, and they are not subject to prospecting. They are only available on a competitive basis, see 43 CFR 3521.2 * * *.

By memoranda dated October 20, 1975, the Director, Geological Survey, informed the Montana State Office that, with respect to appellant's permit applications M 31584 and M 31586, Survey records disclosed that the extent and workability of the phosphate bed on the applied for lands had been determined and the lands were thereby subject to competitive leasing provisions rather than prospecting provisions of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 et seq. (1970). A third memorandum stated that an identical determination had been made with respect to the lands applied for in permit application M 31585, with the exception of an 80-acre tract which was determined to be subject to the prospecting provisions of the Mineral Leasing Act.

In his statement of reasons on appeal, appellant argues that: (1) at the time he filed his permit applications the lands were available for phosphate exploitation under the Mineral Leasing Act; (2) at the time he filed his applications the lands had not been classified as subject to competitive leasing for phosphate; (3) the Secretary is authorized to issue permits to prospect unclaimed and undeveloped land areas subject to the provisions of the Mineral Leasing Act and 43 CFR 3510.0-3; (4) the Secretary is authorized to issue permits to qualified applicants to prospect unclaimed and undeveloped areas of mineral lands and mineral deposits in public

lands pursuant to 43 CFR 3510.1-1; and (5) the purpose and intent of the permit is to allow for sufficient exploration to determine the existence of, character, workability and commercial potential of the phosphate deposits therein and this has not been determined over the entire area covered by the subject applications.

The Mineral Leasing Act grants the Secretary of the Interior authority to lease phosphate deposits of the United States when in his judgment the public interest will be best served thereby. 30 U.S.C. § 211(a) (1970). 43 CFR 3500.0-3(a)(4); 43 CFR 3501.1-1(c). Where prospecting or exploratory work is "necessary to determine the existence or workability of phosphate deposits," the Secretary is authorized to issue prospecting permits. 30 U.S.C. § 211(b) (1970). 43 CFR 3510.0-3; 43 CFR 3510.1-1. Accordingly, while appellant's references to the phosphate prospecting provisions of the Mineral Leasing Act, and the regulations promulgated thereunder, are correct, his arguments are nevertheless misapplied in this instance. As the statute indicates, prospecting permits are to be issued only where the existence or workability of the phosphate bed underlying the land has not been determined. Atlas Corp., 74 I.D. 76, 77-78 (1967). In the present case, the Geological Survey has indicated that its records disclose that the extent and workability of the phosphate bed on the rejected lands have been determined. Therefore, assuming the correctness of that determination, appellant's applications were properly rejected. William J. Colman, 9 IBLA 15 (1973); J. D. Archer, 1 IBLA 26, 77 I.D. 124 (1970).

[1] With regard to appellant's statement that prior to the filing of his applications the lands had not been classified as subject to competitive leasing, we note the following. The record does not disclose the date at which the Survey first determined the mineral character of the subject lands, that is, Survey's memoranda stating that its records disclosed the extent and workability of the land do not afford any clue as to whether such determination preceded appellant's application filings. However, the matter is irrelevant. The filing of a phosphate prospecting permit application creates no vested rights in the applicant, and the permit application must be rejected if prior to the issuance of a permit the land applied for is determined to be subject solely to the competitive leasing provisions of the Mineral Leasing Act. This holds true even if the offer was filed prior to the ascertainment of the extent or workability of the phosphate bed underlying the applied for lands. Frank J. Allen, A-30641 (May 17, 1967); cf. William T. Alexander, 21 IBLA 56 (1975).

[2] We also reject appellant's argument regarding the correctness of Survey's determination. Appellant has not submitted any evidence in support of his contention. Thus, the only question

that remains is whether we may rely upon the conclusions stated within Survey's memoranda. In J. D. Archer, supra at 29, 77 I.D. at 126, the Board had the following to say with regard to this issue:

* * * When the Geological Survey has concluded from the available geological data that further exploration is, or is not, needed to determine the existence or workability of phosphate deposits within a particular area, the Secretary may rely upon the reports of the Survey setting forth the conclusions reached without examining the technical data upon which those conclusions were based. See Carl Nyman, 59 I.D. 238 (1946); Roland C. Townsend, A-30142, A-30250 (September 14, 1965).

In this instance, the Geological Survey simply reported that it had previously found the lands described in appellant's application to be suitable for leasing, and, upon the basis of its earlier determination, it recommended the rejection of the application. The only question presented on this appeal is whether such a report is an adequate basis for action by the land office. We find that it is.

This is not to say, of course, that appellant has no right to know what facts support the conclusions of the Geological Survey or to challenge those conclusions. Appellant is entitled, upon proper inquiry of the Geological Survey, to be advised of the factual basis for the Survey's conclusions and to question, for cogent reasons, the soundness of the Survey's determination. The record before us, however, contains no evidence of any attempt on the part of appellant to ascertain from the Geological Survey the basis for its initial determination that the lands now applied for are subject to leasing. In the absence of a showing that there was an abortive attempt to obtain additional information, we do not find that appellant has been denied fair consideration of his application. As no error has been shown in the determination that the lands are subject to leasing and are, therefore, not subject to the prospecting provisions of the Mineral Leasing Act, the application was properly rejected.

Accordingly, since in the present case too, no error has been shown with respect to Survey's determination, appellant's applications were properly rejected.

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 affirmed.

Martin Ritvo
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Frederick Fishman
Administrative Judge

