

LEON F. SCULLY, JR.
EILEEN SCULLY

IBLA 80-155

Decided September 9, 1980

Appeal from the decision of the Eastern States Office, Bureau of Land Management, dismissing a protest of eight hardrock prospecting permits. ES 16806, etc.

Affirmed as modified.

1. Applications and Entries: Generally--Mineral Lands: Prospecting Permits

Where a prospecting permit applicant is required to furnish evidence of its qualifications to hold the permit, proper reference to its corporate qualifications statement on file in any Bureau of Land Management office fully satisfies the requirements of 43 CFR 3502.1-3.

2. Applications and Entries: Priority--Mineral Lands: Prospecting Permits

Where, under 43 CFR 3502.7, evidence of qualifications to hold a prospecting permit must be submitted simultaneously with other application materials and such evidence is not submitted with the application, the application is deficient, the filing is ineffective, and no priority attaches. However, where an applicant submits the missing evidence before rejection occurs or becomes final, 43 CFR 3502.7 is satisfied, an effective filing occurs, and priority attaches on the date of the cure.

APPEARANCES: Leon A. Scully, Jr., and Eileen Scully, pro sese; E. Dale Trower, Associate General Counsel, for Amax Exploration, Inc.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Leon F. Scully, Jr., and Eileen Scully have appealed from the decision of the Eastern States Office, Bureau of Land Management (BLM), dated October 23, 1979, dismissing their protest of eight hardrock prospecting permit applications ES 16806, 18158, 18298 through 18302, and ES 18510, 1/ filed on various dates in 1977 and 1978, by Amax Exploration, Inc. (Amax), for certain lands in Wisconsin. On March 1, 1979, appellants filed prospecting permit applications ES 20582 through 20589, which directly conflict with each of the Amax applications.

The basis of appellants' protest was twofold. First, appellants alleged that the Amax permit applications were defective because Amax's corporate qualifications statement was not filed in the "proper land office" as required by 43 CFR 3502.1-3(a). They claimed that the proper office in this case was BLM's Eastern States Office, not the Colorado State Office which was where the statement was on file. Second, appellants contended that those applications which identified Aquitaine Mining Corporation, Inc. (AMC), as a party in interest did not comply with 43 CFR 3502.7. Specifically, they claimed that "while a copy of the written agreement [between Amax and AMC] is attached there is no separate or joint statement signed by the interested party and the applicant accompanying the agreement," and AMC did not furnish evidence of its qualifications to hold a lease. Appellants concluded that failure to comply with these requirements mandated rejection of the Amax applications pursuant to 43 CFR 3511.2-4(a)(7).

BLM dismissed the protest on the basis that (1) "proper office" as used in 43 CFR 3502.1-3(a) includes any BLM office in which the corporate qualifications have been filed so long as the application provides the appropriate file serial number; (2) a statement signed by both Amax and AMC did accompany the applications where necessary; and (3) although the AMC qualifications had not been filed on the date the

1/ Appellants' original protest letter listed ES 18310 as one of the Amax permit applications that they were protesting. In its decision, BLM pointed out that ES 18310 was a noncompetitive oil and gas lease offer, not prospecting permit application filed by Amax. The heading to appellants' notice of appeal lists ES 18510 rather than ES 18310 without comment. ES 18510 is an Amax application. Ordinarily we would dismiss this appeal as to ES 18510 since it was not the subject of the decision below. However, we believe that appellants would likely reinstitute their protest against ES 18510 and therefore we will review ES 18510 at this time. Amax is not prejudiced by such review since it assumed that the protestants were mistaken in identifying ES 18310, and addressed the status of ES 18510 in their response to appellants' protest.

applications were submitted, they were filed on January 5, 1978, and accepted effective January 12, 1978, by the Colorado State Office. Therefore, BLM concluded: "The priority of the applications is established as of January 12, 1978. 43 CFR 3511.2-4(b) recognizes specifically the right of the applicant to cure a defect in qualifications. The priority is established as of the date of correction. The applicant is not penalized for correcting a defect sua sponte."

In their statement of reasons, appellants reiterate their argument as to the correct interpretation of the term "proper office," as used in 43 CFR 3502.1-3. In addition, they note that 43 CFR 3502.7 requires that if any applicant is not the sole party in interest, not only must the nature of the agreement between the applicant and the interested party be revealed but also, simultaneously, all interested parties must furnish evidence of their qualifications to hold a permit. They then argue, "This is not a curable defect but noncompliance with a mandatory requirement of Subpart 3502. Under 3511.2-4 the Amax-Aquitaine applications must be rejected. A corporation cannot file now and qualify later."

[1] The regulation first at issue, 43 CFR 3502.1-3(a), provides: "All applicants must file their statements of qualification and evidence thereto in the proper office unless previously filed, in which event a reference by serial number to the record and the proper office in which filed, together with a statement as to any amendments, will be accepted." (Emphasis added.) This regulation clearly contemplates that reference to previously filed corporate qualifications records is acceptable so long as the records are correctly identified by serial number and proper office where filed. The use of the term "proper office" is meant to indicate that reference to the records without proper identification of the BLM office in which they are filed is unacceptable. See Resources Exploration & Mining, Inc. (On Reconsideration), 43 IBLA 89 (1979). It is established Departmental practice that reference to evidence of corporate qualifications on file in any BLM State office fully satisfies the requirements of 43 CFR 3502.1-3. Duval Corp., 45 IBLA 355, 364 (1980). See Churchill Corp., 27 IBLA 234 (1976). Amax has properly referenced its corporation qualifications record on file with the Colorado State Office, BLM, as Colorado-0126354 on each permit application. 2/

2/ Permit applications ES 18298 through 18302 and ES 18510 also identify a second Amax qualifications file, BLM 066100. In Amax's response dated April 25, 1979, to appellants' protest, Amax indicates that this is a reference to Amax corporate qualification files in the Eastern States Office, BLM. All "BLM" prefixed serial numbers refer to cases in the possession of the Eastern States Office.

[2] Appellants argue that certain Amax permit applications did not comply with 43 CFR 3502.7 upon filing and thus must be rejected under 43 CFR 3511.2-4.

The cited regulations read in relevant part as follows:

§ 3502.7 Showing as to sole party in interest.

Every applicant for lease or permit must submit at the time of filing a signed statement that he is the sole party in interest in the application and the lease or permit, if issued; if not, he shall set forth the names of the other interested parties. If there are other interested parties in the application, a separate or joint statement must be signed by them and by the applicant setting forth the nature and extent of the interest of each in the application, the nature of the agreement between them, if oral, and a copy of such agreement if written. Such separate or joint statement of interest and written agreement, if any, or a statement of the nature of such agreement, if oral, must accompany the application. Simultaneously, all interested parties must furnish evidence of their qualifications to hold such lease interest or permit.

§ 3511.2-4 Rejection.

(a) Except as provided in § 3511.2-3 an application will be rejected if:

* * * * *

(7) There is noncompliance with the requirements specified in Subpart 3502.

(b) Curable defects. If an application is defective to the extent set out in paragraph § 3511.2-4(a) of this section, the applicant will be given an opportunity to file a new application within 30 days from service of the rejection, and the fee and rental payments on the old application will be applied to the new application if the new application shows the serial number of the old application. The advance rental will be returned unless within the 30-day period another application is filed.

BLM received Amax applications ES 16806 and ES 18158 on January 18, 1977, and December 5, 1977, respectively. On each application form, Amax stated that it was the sole party in interest and properly identified its corporate qualifications file. Amax did not fail to comply with 43 CFR 3502.7 in the manner suggested by appellants and, in fact, did fully comply with the regulation as to these two applications.

In the remaining applications, ES 18298 through 18302 and ES 18510, Amax indicated that it was not the sole party in interest and submitted the appropriate statement defining its agreement with AMC as another party interested in the permits. As pointed out by appellants, simultaneous submission of evidence of the interested parties' qualifications to hold a permit is also required by 43 CFR 3502.7. Permit application ES 18510, dated February 13, 1978, properly references the corporate qualifications file of both Amax and AMC and thus the application fully complies with the regulation.

However, when permit applications ES 18298 through 18302 were submitted to BLM on December 20, 1977, AMC did not have the required corporate qualifications statement on file with BLM. Therefore, the applications were deficient at that time as argued by appellants.

The record indicates that Amax informed BLM that AMC was in the process of submitting the required statement to BLM and that Amax would notify BLM of the file serial number as soon as it was available. AMC submitted its qualifications statement to the Colorado State Office which accepted it on January 12, 1978. Amax then notified the Eastern States Office, BLM, on January 16, 1978, that the AMC file, C-26294, should be noted in permit applications ES 18298, 18299, 18300, and 18302. On February 16, 1978, Amax informed BLM that application ES 18301 should also be so noted. Reference to it had inadvertently been omitted from the January 16, 1978, notification.

Appellants argue that the applications must be rejected pursuant to 43 CFR 3511.2-4(a)(7) and cannot be cured pursuant to 43 CFR 3511.2-4(b) because there never was simultaneous submission of the required evidence. We disagree.

BLM could have rejected these applications following their submission and provided Amax 30 days to submit a new application pursuant to 43 CFR 3511.2-4(b). The new application would have then held priority as of the date that it was submitted. Duval Corp., supra; VOP, Inc., 31 IBLA 142 (1977). That is not the situation before us. Since BLM did not reject the Amax applications, 43 CFR 3511.2-4(b) does not apply.

The filing of Amax applications ES 18298 through 18302 on December 20, 1977, was ineffective and thus the applications can be afforded no priority as of that date. However, long standing Departmental policy provides that deficient applications may be cured by later submission of the missing material before rejection becomes final with priority attaching on the date of the cure. Any conflicting applications properly filed before the cure would hold a higher priority. This principle has been applied most often in the case of oil and gas lease offers. Phillips Petroleum Co., 38 IBLA 346 (1978); James H. Scott, 18 IBLA 55 (1974); M. P. Shiflet, 15 IBLA 112 (1974),

and cases cited therein. It has also been applied to prospecting permits. Ruby Company, 72 I.D. 189, 192 (1965). We find it equally applicable to the Amax applications. An effective filing occurred and priority attached on January 16, 1978, for applications ES 18298 through 18300 and ES 18302, and on February 16, 1978, for application ES 18301 since those are the earliest dates when all required submissions were presented to the Eastern States Office. ^{3/} To construe "simultaneously" to mean that all submissions must physically arrive in the BLM office at the same moment would be inconsistent with the above stated Departmental policy. Evidence of qualifications have been furnished simultaneously with the other required statements and effective filing of an application occurs when the last required submissions have been received. It would be an exercise in paper shuffling to require BLM to return incomplete applications when the applicant has informed BLM of a deficiency and the fact that it will promptly be remedied. The penalty for a deficient submission which is cured before final rejection is that priority attaches only upon cure of the defect. Duval Corp., *supra* at 365.

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 as modified.

James L. Burski
Administrative Judge

I concur:

Douglas E. Henriques
Administrative Judge

^{3/} To this extent, the decision of the Eastern States Office according priority as of January 12, 1979, was erroneous. The operative date is not the date that AMC's corporate qualifications were filed in Colorado, but rather the date that the Eastern States Office was notified of the AMC qualification file's serial number in the Colorado State Office. The Eastern States Office's decision is modified to this extent.

ADMINISTRATIVE JUDGE GOSS CONCURRING IN PART AND DISSENTING IN PART:

I concur in the opinion, except as to ES 18510. See n.1 of decision. Because that application was not the subject of appellants' protest, and was not the subject of the appealed BLM decision, the Board has no jurisdiction thereon. The appeal as to ES 18510 should be dismissed.

Joseph W. Goss
Administrative Judge

