

CHRISTIAN F. MURER

IBLA 81-393

Decided September 1, 1981

Appeal from a decision of the Idaho State Office, Bureau of Land Management, rejecting phosphate prospecting permit application I-9357.

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 within a known phosphate leasing area 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. Mineral Lands: Determination of Character of -- Phosphate Leases and Permits: Permits

It is unnecessary to demonstrate the workability of a mineral deposit by an actual physical examination of the deposit in the land sought by means of drilling or actual exploratory work on the ground. Competent evidence to establish the fact that exploration is unnecessary to determine the existence or workability of a phosphate deposit may consist of proof of the existence of minerals in adjacent lands and of geological and other surrounding external conditions.

APPEARANCES: Christian F. Murer, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Christian F. Murer appeals from a decision of the Idaho State Office, Bureau of Land Management (BLM), dated January 13, 1981, rejecting prospecting permit application I-9357. Appellant sought a permit to prospect for phosphate in SE 1/4 sec. 5, and N 1/2 NE 1/4, SE 1/4 NE 1/4 sec. 8, T. 14 S., R. 43 E., Boise meridian, Bear Lake County, Idaho.

Murer's application was filed pursuant to the Act of March 18, 1960, now codified at 43 U.S.C. § 211(b) (1976). This subsection provides:

(b) Where prospecting or exploratory work is necessary to determine the existence or workability of phosphate deposits in any unclaimed, undeveloped area, the Secretary of the Interior is authorized to issue, to any applicant qualified under this chapter, a prospecting permit which shall give the exclusive right to prospect for phosphate deposits, including associated minerals, for a period of two years, for not more than two thousand five hundred and sixty acres; and if prior to the expiration of the permit the permittee shows to the Secretary that valuable deposits of phosphate have been discovered within the area covered by his permit, the permittee shall be entitled to a lease for any or all of the land embraced in the prospecting permit. [Emphasis supplied.]

BLM rejected appellant's application in its entirety, because all of the lands sought therein are located in a known phosphate leasing area and could only be leased under the competitive provisions of the Mineral Leasing Act, 30 U.S.C. § 211(a) (1976). For our purposes, a known phosphate leasing area is an area where prospecting or exploratory work is unnecessary to determine the existence or workability of phosphate deposits. See, e.g., Frank J. Allen, A-30641 (May 17, 1967), and J. D. Archer, A-30886 (Mar. 21, 1968). BLM's conclusion that such an area is available for competitive leasing only follows readily from this informal definition.

Murer appeals from the rejection of application I-9357 noting that this application was filed on March 24, 1975, well prior to the designation of the subject lands as a known phosphate leasing area. He alleges that the lands were open and available for prospecting at the time his application was filed and further charges that Geological Survey (GS) included the subject lands in a known phosphate leasing area without direct knowledge of the commercial grade and quantity of phosphate therein.

[1] Appellant is likely correct that his application was filed before any determination by GS or BLM that the subject lands were in a

known phosphate leasing area. A leasable mineral plat maintained by BLM and dated May 12, 1975, contains no indication of a known phosphate leasing area in T. 13 S., R. 43 E. This same plat, updated to March 2, 1981, shows an area known as the Paris-Bloomington Known Phosphate Leasing Area embracing the relevant portions of secs. 5 and 8. Despite this, we have consistently held that the mere filing of a phosphate prospecting permit application creates no vested rights in the applicant and that such 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. William F. Martin, 24 IBLA 271 (1976); Frank J. Allen, supra.

[2] No basis is given for appellant's assertion that GS lacks direct knowledge of the commercial grade and quantity of phosphate in the subject lands. However, assuming, arguendo, that appellant is correct in this contention, Assistant Secretary Anderson stated in Atlas Corp., 74 I.D. 76 (1967), that it is unnecessary to demonstrate the workability of a mineral deposit by an actual physical examination of the deposit in the land sought by means of drilling or actual exploratory work on the grounds. Competent evidence to establish the fact that exploration is unnecessary to determine the existence or workability of a phosphate deposit may consist of proof of the existence of minerals in adjacent lands and of geological and other surrounding external conditions. Id. at 84-5; William J. Colman, 9 IBLA 15 (1973). Appellant has offered no evidence that the determination by GS is in error. Therefore, a review of the technical data relied upon by GS is not required. William F. Martin, supra.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Idaho State Office is affirmed.

Edward W. Stuebing  
Administrative Judge

We concur:

Bernard V. Parrette  
Chief Administrative Judge

James L. Burski  
Administrative Judge

