

J. R. SIMPLOT CO.

IBLA 81-780

Decided October 14, 1981

Appeal from decision of the Idaho State Office, Bureau of Land Management, rejecting application for a phosphate prospecting permit. I-9129.

Affirmed.

1. Applications and Entries: Vested Rights--Mineral Lands: Leases--
Mineral Lands: Prospecting Permits--Mineral Leasing Act:
Generally--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 by Geological Survey to be within a known phosphate leasing area and 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 underlying phosphate bed, which finding requires competitive leasing of the land.

APPEARANCES: Blair D. Jaynes, Esq., Boise, Idaho, for appellant.

OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

J. R. Simplot Company appeals from the May 22, 1981, decision of the Idaho State Office, Bureau of Land Management (BLM), rejecting its application for a phosphate prospecting permit (I-9129). Appellant filed an application for a phosphate prospecting permit with BLM on December 31, 1974, under the terms of the Mineral Leasing Act of 1920,

as amended, 30 U.S.C. § 211 (1976), for the W 1/2 NE 1/4 NW 1/4, sec. 14, T. 8 S., R. 42 E., Boise meridian, Idaho.

In a memorandum dated June 12, 1980, the Chief of the Land and Minerals Operations Branch of BLM requested from the Geological Survey (GS) a report on the phosphate reserves in the area embraced by appellant's application. On September 9, 1980, the Chief of the Conservation Division of GS replied as follows: "Effective October 16, 1978, the Aspen Range Known Phosphate Leasing Area has been established in southeastern Idaho as subject to the competitive phosphate leasing provisions of the Mineral Leasing Act of February 25, 1920 (30 U.S.C. § 211), as amended." The memorandum indicates that the subject lands are included in this area. In a memorandum to BLM dated May 15, 1981, the acting Conservation Manager, Western Region, GS, advised BLM that the lands under application are classified as valuable for phosphate and are located within a known phosphate leasing area. Accordingly, he recommended that appellant's application be rejected.

On May 22, 1981, BLM rejected the application because all lands embraced therein were located in the "Webster Range-Dry Ridge" phosphate leasing area 1/ and could only be leased under the competitive provisions of the Mineral Leasing Act. Appellant filed a timely appeal.

[1] 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 by doing so. 30 U.S.C. § 211(a) (1976); 43 CFR 3500.0-3(a)(3). 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) (1976); 43 CFR 3510.1. Prospecting permits are to be issued only where the existence or workability of the phosphate bed underlying the land has not been determined. Christian F. Murer, 57 IBLA 333 (1981); William F. Martin, 24 IBLA 271, 273 (1976); Atlas Corp., 74 I.D. 76, 85 (1967). In the present case, GS has previously determined the extent and workability of the phosphate bed on the subject lands. Moreover, GS has indicated that the lands are valuable for phosphate and recommended that they be leased competitively only. In the absence of any evidence showing that GS's determination is incorrect, the lands must be leased competitively, and appellant's application for a prospecting permit was therefore, properly rejected. 43 CFR 3521.2-2(c)(1); Christian F. Murer, *supra*; William F. Martin, *supra*; William J. Colman, 9 IBLA 15 (1973); J. D. Archer, 1 IBLA 26, 77 I.D. 124 (1970).

Appellant states correctly that the lands had not been found to be within the phosphate leasing area or to be appropriate for competitive leasing prior to the filing of its application. However, filing

 1/ We note that BLM's decision incorrectly refers to the "Webster Range-Dry Ridge" phosphate leasing area. After checking with BLM, we have confirmed that it was the Aspen Range Known Phosphate Leasing area to which they intended to refer. The misnaming of this area in BLM's decision does not alter the correctness of its decision.

a phosphate prospecting permit application creates no vested rights in the applicant, and the permit application is properly 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 requested lands. Christian F. Murer, supra; William F. Martin, supra; Frank J. Allen, A-30641 (May 17, 1967); see Permian Mud Service Inc., 31 IBLA 150, 159, 84 I.D. 342, 346 (1977); William T. Alexander, 21 IBLA 56 (1975).

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.

Bernard V. Parrette
Chief Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

James L. Burski
Administrative Judge