

GEORESOURCES, INC.

IBLA 81-433

Decided September 29, 1982

Appeal from decision of the Montana State Office, Bureau of Land Management, rejecting phosphate prospecting permit application. M 32834

Reversed.

1. Mineral Lands: Prospecting Permits -- Phosphate Leases and Permits: Permits

Where there is no regulatory requirement that issuance of an application for a phosphate prospecting permit is contingent upon the filing of an exploration plan, a BLM decision rejecting an application for a permit because no exploration plan was first filed will be reversed.

APPEARANCES: Gordon E. Walter, vice president, GeoResources, Inc., for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

This appeal is taken from a decision dated February 23, 1981, by the Montana State Office, Bureau of Land Management (BLM), rejecting appellant's phosphate prospecting permit application (M 32834) for failure to submit an exploration plan.

The application was filed with BLM on December 24, 1975, for lands in T. 5 S., R. 10 W., in Beaverhead County, Montana.

Nearly 5 years later, by notice dated November 17, 1980, BLM advised appellant that the application was partly under the jurisdiction of the Forest Service and partly under the jurisdiction of BLM. The notice stated that appellant would have to file an exploration plan so that BLM and Forest Service could prepare an environmental report in connection with the application. The notice allowed 60 days within which to furnish a plan.

By letter dated December 11, 1980, appellant requested a 1-year extension stating:

[W]e are very interested in complying with your request and maintaining our leases. However, the individual that performed the initial work in 1975 is no longer with this firm and we have had a major administrative change in 1980.

Due to the considerable passage of time; we will require an entire program starting over with geologic investigation and negotiations for a purchaser or end-products user. This will be after we find an individual to perform the exploration and planning use.

BLM's December 17, 1980, response to appellant's request was: "We are unable to grant an extension of one year. The best we can do is grant you an additional 30 days. This would mean that the exploration plan must be filed no later than February 20, 1981." BLM gave no indication of why the best it could do was 30 days. When appellant failed to submit an exploration plan by February 20, 1981, BLM rejected the application.

On November 16, 1981, appellant filed with the Board a letter supplementing its statement of reasons and indicating that a market survey had been completed and that technical experts were being contracted to proceed with engineering evaluations. The letter requested a further 20-month extension within which to furnish a plan.

[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).

One of the regulations pertinent to this appeal is 43 CFR 23.7. It states: "§ 23.7 Approval of exploration plan. (a) Before commencing any surface disturbing operations to explore, test, or prospect for minerals covered by the mineral leasing acts the operator shall file with the mining supervisor a plan for the proposed exploration operations." (Emphasis added.) Operator is defined at 43 CFR 23.3(i) as "the permittee, lessee, or contractor designated in a permit, lease or contract."

We conclude from these regulations that the sequence of events anticipated by the regulations is the filing of an application for a prospecting permit, the issuance of a prospecting permit and then the submission of an exploration plan to the mining supervisor by the permittee. <sup>1/</sup>

There is no question that the information requested by BLM in its November 17, 1980, letter is the same as that described in 43 CFR 23.7(c).

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<sup>1/</sup> "Mining Supervisor" is defined in 43 CFR 23.3(c) as "the Area Mining Supervisor, or his authorized representative, of the Geological Survey authorized as provided in 30 CFR 211.3 and 231.2 to supervise operations on land covered by a permit or lease." Area mining supervisors are now part of the Minerals Management Service (MMS). By Secretarial Order No. 3071 published in the Federal Register on Feb. 2, 1982, 47 FR 751, the Secretary created MMS to, inter alia, take over the functions of the Conservation Division, Geological Survey.

BLM stated that the plan should include "a description and map of the area, methods of exploration, time of activity and protection measures to be taken." 43 CFR 23.7(c) provides:

(c) Depending upon the size and nature of the operation and the requirements established pursuant to § 23.5 the mining supervisor or the district manager may require that the exploration plan submitted by the operator include any or all of the following:

- (1) A description of the area within which exploration is to be conducted;
- (2) Two copies of a suitable map or aerial photograph showing topographic, cultural and drainage features;
- (3) A statement of proposed exploration methods, i.e. drilling, trenching, etc., and the location of primary support roads and facilities;
- (4) A description of measures to be taken to prevent or control fire, soil erosion, pollution of surface and ground water, damage to fish and wildlife or other natural resources, and hazards to public health and safety both during and upon abandonment of exploration activities. [Emphasis added.]

We conclude that it was improper for BLM to reject the application because appellant failed to file information that is only required by regulation to be filed after a permit is issued.

Despite this conclusion, we do not wish to suggest that it is improper for BLM to request supplementary information from an applicant concerning an application when BLM is involved in the technical examination required by 43 CFR 23.5. In fact, BLM may request the information that would be provided in an exploration plan; however, the failure of an applicant to provide that information cannot serve by itself as a sufficient basis for rejection of the permit application.

Moreover, even if BLM did have the authority to require an applicant to file an exploration plan, we find its refusal to grant appellant an extension of more than 30 days in this case was unreasonable. Appellant explained the necessity for an extension in its December 11, 1980, letter to BLM. In addition, an obvious reason for an extension was set forth in appellant's November 16, 1981, letter to the Board. It was severe winter weather. This is a factor which should have been considered by BLM in determining whether to grant appellant an extension of time. 2/ BLM gave appellant 60 days in

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2/ Appellant's request for a 20-month extension to file an exploration plan may involve a misperception by appellant of what is required in an exploration plan. In its Nov. 16, 1981, letter appellant indicated that it anticipated undertaking core drilling prior to filing an exploration plan. As stated in 43 CFR 23.7(a) an exploration plan must be filed and approved "[b]efore commencing any surface disturbing operations to \* \* \* prospect for minerals \* \* \*." (Emphasis added.)

November 1980 to submit a plan. In December 1980 appellant explained that because of changed circumstances over the years its application had been pending it needed an extension to do, inter alia, field investigations. In the middle of winter BLM granted appellant 30 more days until February 1981 to file a plan. BLM provided no justification for only granting 30 days, and the record reveals none.

Clearly, since there is no regulatory requirement that an appellant for a prospecting permit file the information requested by BLM and, in fact, the regulations indicate that such information may be part of the exploration plan filed by the operator, there is no support for BLM's rejection of appellant's application for failing to file that information. In addition, as pointed out above, it was unreasonable to reject the application on the basis that information, not required by regulation to be filed by the applicant, was not filed timely.

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 reversed.

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Gail M. Frazier  
Administrative Judge

We concur:

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C. Randall Grant, Jr.  
Administrative Judge

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Bruce R. Harris  
Administrative Judge

