

CHRISTIAN F. MURER

IBLA 83-397

Decided August 23, 1983

Appeal from decision of Idaho State Office, Bureau of Land Management, rejecting prospecting permit applications I-9350 and I-9356 in part and prospecting permit application I-9355 in its entirety.

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 land described in the application, which finding requires competitive leasing of the land.

APPEARANCES: Christian F. Murer, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Christian F. Murer has appealed from a decision of the Idaho State Office, Bureau of Land Management (BLM), dated January 14, 1983, rejecting his application for phosphate prospecting permit I-9355 in its entirety and applications I-9350 and I-9356 in part. Appellant's applications were filed with BLM on March 24, 1975, under the terms of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 211(b) (1976). This subsection provides:

(b) Where prospecting or exploratory work is necessary to determine the existence of 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.]

Reports by the Director of the Minerals Management Service (MMS), Western Region, indicated that all lands applied for in application I-9355 and portions of the lands applied for in applications I-9350 and I-9356 are located in known phosphate leasing areas (KPLA's). For our purposes, a KPLA 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). Evidence used to establish 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. MMS recommends that those lands included in the KPLA's be rejected.

Appellant contends on appeal that the lands included in his applications were unclaimed, undeveloped, and available for prospecting at the time of filing, and further contends that he holds "the priority rights to have the prospecting permits granted under the regulations." Appellant has offered no evidence to indicate that MMS' determination of the character of the land is incorrect.

[1] The issues presented in the instant case are similar to those found in Christian F. Murer, 57 IBLA 333 (1981). In Murer, the Board stated at 335:

[W]e 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*.

A similar conclusion is compelled in the present appeal. See also J. R. Simplot Co., 58 IBLA 305 (1981).

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.

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Anne Poindexter Lewis  
Administrative Judge

We concur:

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Edward W. Stuebing  
Administrative Judge

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C. Randall Grant, Jr.  
Administrative Judge

