

MARINE MINERALS CORPORATION

IBLA 76-114

Decided June 10, 1976

Appeal from decision of the Wyoming State Office, Bureau of Land Management, rejecting applications for preference right sodium leases.

Set aside and remanded.

1. Administrative Procedure: Hearings--Mineral Leasing Act:  
Generally--Sodium Leases and Permits: Leases-- Sodium Leases and Permits: Permits

A sodium prospecting permittee who applies for a preference right sodium lease, alleging with supportive data that he has discovered a valuable deposit of sodium and that the land is chiefly valuable for sodium, as required by section 24 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 262 (1970), is entitled to a hearing conducted in accordance with Section 5 of the Administrative Procedure Act, 5 U.S.C. § 554 (1970), before his lease application may be finally rejected for failure to prove such a discovery.

APPEARANCES: John H. Tippit, Esq., of Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Marine Minerals Corporation appeals from the July 10, 1975, rejection by the Wyoming State Office, Bureau of Land Management (BLM), of two preference right lease applications. Appellant had applied for the leases pursuant to 30 U.S.C. § 262 (1970), based upon sodium prospecting permits W-25391 and W-25392.

Sodium prospecting permit W-25391 was issued to Margaret J. Nielsen and permit W-25392 was issued to Irwin Nielsen, both for a period of 2 years beginning February 2, 1972. On April 15, 1973, the permits were assigned to appellant. These assignments were subsequently approved by BLM.

In late 1973 and early 1974, appellant drilled an exploratory well on the land covered by each permit. Appellant reported that it found an "amber colored sodium brine" in each well. Alleging a discovery of valuable deposits of sodium minerals based on such brine, appellant applied for the preference right sodium leases prior to the expiration of the prospecting permits.

Upon receipt of the lease applications, BLM submitted them to the United States Geological Survey (Survey) for a report and recommendations. Survey, in a memorandum dated June 26, 1975, stated:

A review of the documents submitted in support of the subject applications does not substantiate the discovery of a valuable deposit of sodium in the lands under the captioned sodium prospecting permits.

Survey then recommended that the lease applications be rejected.

In its decision rejecting the lease applications, BLM relied solely on the above quoted Survey "report." Appellant disputes the finding of Survey. It has submitted various reports, maps and charts in support of its alleged discovery. Appellant requests that we order BLM to issue the leases or, in the alternative, to hold a hearing.

[1] Section 24 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 262 (1970), states:

Upon showing to the satisfaction of the Secretary of the Interior that valuable deposits of one of the substances enumerated in section 261 of this title [sodium-based compounds] have been discovered by the permittee within the area covered by his permit and that such land is chiefly valuable therefor, the permittee shall be entitled to a lease for any or all of the land embraced in the prospecting permit \* \* \*. [Emphasis added.]

Appellant appears to have shown the existence of some sodium on the lands, but whether there are "valuable deposits" and the "land is chiefly valuable therefor" cannot be satisfactorily ascertained from the record before us. The Department has held in the past that before a sodium preference right lease application is finally rejected, the applicant should be afforded an opportunity for a hearing before an Administrative Law Judge in accordance with the provisions of section 5 of the Administrative Procedure Act, 5 U.S.C. § 554 (1970), where there are questions of fact as to the extent and nature of the occurrence of the minerals in the deposits and as to the feasibility of developing the deposits. Wolf Joint Venture, 75 I.D. 137 (1968); Kaiser Aluminum and Chemical Corp., A-30982 (May 3, 1968); cf. Peter I. Wold, 13 IBLA 63, 67, 80 I.D. 623, 625 (1973). Appellant has submitted sufficient documents and alleged sufficient facts to warrant such a hearing.

Ordinarily, we would remand a case such as this to the Hearings Division for a hearing on whether appellant had discovered a valuable deposit of sodium as of January 31, 1974, the expiration date of both permits, and whether the land is chiefly valuable therefor. However, on May 7, 1976, the Department of the Interior promulgated amended regulations on the issuance of preference right mineral leases. 41 F.R. 18845 (May 7, 1976). Therefore, we remand the case to the BLM State Office for consideration in accordance with these regulations, rather than proceeding directly to hearing. This consideration includes the right to a hearing should the BLM State Office again reject appellant's application. 43 CFR 3521.1-1(j)(2), published in 41 F.R., supra at 18848. 1/

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1/ 43 CFR 3521.1-1(i), published in 41 F.R., supra at 18848, states in part that the "authorized officer may reject the application and inform the permittee of the grounds for the rejection." Although BLM is entitled to rely on the expert opinion of Survey with regard to the existence of a "valuable deposit," merely stating the conclusion that the applicant has not discovered a "valuable deposit," as in appellant's case, does not inform the applicant of the "grounds of the rejection." BLM must inform the applicant of the basis for Survey's conclusion.

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 set aside and the case is remanded for further consideration consistent with this opinion.

Joan B. Thompson

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Administrative Judge

We concur:

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Martin Ritvo  
Administrative Judge

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Douglas E. Henriques  
Administrative Judge

