

OLIN CORP.

IBLA 78-58 Decided January 29, 1979

Appeal from decision of the Wyoming State Office, Bureau of Land Management, terminating sodium lease W-0225919.

Set aside and remanded.

1. Appeals—Mineral Leasing Act: Generally—Rules of Practice: Appeals:
Generally—Sodium Leases and Permits: Leases

Where Bureau of Land Management terminates a sodium lease because lessee failed to submit justification for holding a lease in excess of the acreage limitation, the decision will be set aside upon submission or explanation of failure to provide written information, and the case will be remanded for the State Office to determine whether the information submitted on appeal justifies continued lease tenure.

APPEARANCES: Brent R. Kunz, Esq., Hathaway, Speight, and Kunz, Cheyenne, Wyoming, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Olin Corp. has appealed the decision of the Wyoming State Office, Bureau of Land Management (BLM), terminating sodium lease W-0225919. On September 21, 1962, Olin filed applications for assignment of several sodium leases including the subject lease. Because the total acreage exceeded the 5,120 acre limitation set forth at 30 U.S.C. § 184(b)(1) (1976), Olin applied for permission to hold this excess acreage pursuant to 30 U.S.C. § 184(b)(2) (1976). The Geological Survey recommended that Olin be given permission to hold this excess

acreage for a period of 10 years from approval date in order to allow Olin to delineate the deposits in the leasehold as a separate mining unit, or to dispose of that acreage by relinquishment, assignment, or to submit for approval justification to continue in possession of the land embraced in the leases. By decision dated January 30, 1963, the assignment was approved subject to that provision.

Because no exploration had been done, the State Office, by letter dated November 26, 1975, requested Olin to submit justification for holding excess acreage. On January 3, 1977, Olin submitted a letter explaining it had been discussing possible venture agreements for these leases with a company interested in trona for stack-gas scrubbing and also a large chemical company needing a long-term source of soda ash. In a letter dated March 22, 1977, Geological Survey informed Olin that this explanation was too vague and general and requested that Olin state explicitly how its negotiations were progressing and mention specific companies involved. Because Olin had not submitted this information, the State Office decided to terminate the lease in its decision of October 4, 1977.

Olin first argues that the department does not have authority to terminate this lease administratively, but must go to court to have the lease cancelled, citing Boesche v. Udall, 373 U.S. 472, 479 (1963). Olin further alleges that it was assured that no action would be taken to cancel the lease until after the end of the rental period, October 31, 1977. As the March 22, 1977, letter made no time limitation for the submission for the required information, Olin assumed that it had until the end of the rental period to submit that information. Olin further states that on August 24, 1977, it had specifically identified the companies that Olin was negotiating with.

It appears that Olin has submitted the requested information on appeal as well as an adequate explanation why it was not furnished earlier. Because the sole basis for the State Office's decision was Olin's failure to submit the information, it is appropriate for us to remand the case so that the State Office may determine whether appellant's submission justifies continued tenure under 30 U.S.C. § 184(b) (1976). See Jerrold R. Cooley, 32 IBLA 387 (1977). In view of this resolution of the case, we need not determine whether the State Office used the correct procedure in deciding to terminate appellant's lease.

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 set aside and the case remanded.

Joseph W. Goss
Administrative Judge

I concur.

Frederick Fishman
Administrative Judge

ADMINISTRATIVE JUDGE STUEBING, CONCURRING:

The majority's sole basis for setting aside the decision cancelling this lease is the rather shaky premise that when Geological Survey made its demand on the Olin Corporation for specific information, no time limit for compliance was imposed. This premise, by itself, will not support the conclusion reached by the majority. In the absence of a stated deadline, the law usually infers that the obligor has a "reasonable" time for compliance. Here the last demand for information was dated March 22, 1977, and by October 4, 1977, the company had made no response or acknowledgement of any kind. BLM was well entitled to think, after a lapse of more than 6 months, that a reasonable time for response had expired, particularly when all the company had been asked to do was supplement its earlier inadequate submission made in reply to the original request of November 26, 1975, nearly 2 years previously.

Moreover, the company was well aware that it had been granted approval to hold this lease in excess of the 5,120-acre limitation only for 10 years from January 30, 1963. It was informed of this at the time of its acquisition of the lease in 1963, and reminded of it again by the BLM's letter of November 26, 1975. Under this dispensation, the company had an obligation either to justify its retention of the excess or to divest itself of the lease by January 30, 1973. By November 1975, it had done neither, nor had it even conducted an exploration of the leasehold. Thus, after January 30, 1973, its retention of the lease was unauthorized, and BLM would have been fully justified in instituting proceedings to cancel the lease at any time thereafter. Instead, it afforded the company an opportunity to do what it really should have done nearly 3 years before without Federal prodding.

Nevertheless, rather than availing itself of this renewed opportunity, the company procrastinated. On December 10, 1975, it wrote a letter to BLM, stating only, "We are developing a reply to your request for a justification for continued possession of excess acreage of sodium lands in Wyoming." There is in the record a memorandum of a telephone call from Dick Smith of Olin Corporation to BLM on December 16, 1976, in which Smith "said they would contact us shortly." Finally, more than a year later, in a terse, 3-paragraph letter, the company merely advised that it "had been discussing possible venture agreements," and that "Interest has also been expressed recently by a very large chemical company * * *." The entire substantive portion of this report, which it took the company more than 13 months to "develop" and submit, was contained in the three sentences which comprised the second paragraph of the letter, and was so vague and indefinite as to be almost totally uninformative. By this time almost exactly 4 years had passed since the 10-year conditional approval had expired. Again, at this point, BLM would have been fully

justified in holding that the company had failed to justify its retention of the lease, and initiating proceedings to cancel.

But again the company was contacted and advised that its so-called "justification" was inadequate, and again afforded the opportunity to come forward with information of a specific nature which would justify its retention of the lease. The company submitted no response. After an exchange of memoranda between BLM and the Geological Survey in August and September of 1977, both agencies agreed that cancellation would be appropriate. Accordingly, the lease was cancelled by the decision of October 4, 1977. This was more than 4 years and 8 months after the 10-year approval had expired.

In my opinion, the effort by BLM to cancel the lease was long overdue, rather than premature.

Moreover, under the statute (30 U.S.C. § 184(b) (1976)) and regulation which authorized approval of the holding of excess sodium acreage (43 CFR 195.3(b) in 1963), the clearly stated premise for the granting of such approval is a finding by the authorized officer of BLM, after consultation with the Mining Supervisor, that the additional land is necessary "in order to secure the economic mining of sodium compounds." (Emphasis added.) This is the exclusive basis for such approval, and was the one on which approval was granted in this case. Under that approval, the company had 10 years either to incorporate the land into an economic mining unit or divest itself of its excess. It did neither. Now, apparently, it wishes to retain the lease long enough so it can sell it, nearly 6 years after the approval expired. It is certain that the statutory purpose of the approval was not to allow a lessee to hold excess acreage for sale as an article of commerce, and after the time for performance has expired it certainly would be error to extend the period simply to provide the company with more time to find a buyer.

However, I can find no statutory authority for summary cancellation of a sodium lease by administrative fiat. Even where, as in this case, the excess acreage holding by the lessee was allowed subject to compliance with a condition within a specified time, and the condition has not been satisfied by the lessee, it appears that the Department's only recourse is to initiate an appropriate proceeding in the United States District Court for the district in which the property is located, pursuant to 30 U.S.C. §§ 184(h)(1) and 188(a) (1976). It is my reading of the Mineral Leasing Act, as amended, that the Secretary is empowered only to cancel certain leases issued under the provisions of 30 U.S.C. § 226 (1976), which section is exclusively concerned with oil and gas leases. See 30 U.S.C. § 188(b) (1976).

Accordingly, I am obliged to agree that the decision appealed from must be reversed, but I would recommend that BLM immediately

refer the matter—by and through the Office of the Solicitor—to the Attorney General for the institution of an action to cancel, making certain in so doing that the land status records are appropriately noted to so reflect.

Edward W. Stuebing
Administrative Judge

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