

INTERNATIONAL MINERALS AND CHEMICAL CORP.

IBLA 81-948

Decided November 30, 1982

Appeal from decision of the New Mexico State Office, Bureau of Land Management, providing notice of readjustment of terms of potassium leases. NM-02160 et al.

Reversed and remanded.

1. Mineral Leasing Act: Generally -- Potassium Leases and Permits:
Leases

Where a potassium lease issued under the provisions of sec. 3 of the Act of Feb. 7, 1927, as amended, 30 U.S.C. § 283 (1976), provides that the Secretary may readjust and fix the royalties payable thereunder, and other terms and conditions, at the end of 20 years from the date of issuance of the lease and thereafter at the end of each succeeding 20-year period during the continuance of the lease, notice to the lessee of readjustment in the royalties and other terms and conditions must be made when the 20-year period expires and not at some later time.

APPEARANCES: Walter E. Thayer, Production Manager, International Minerals and Chemical Corp., Carlsbad, New Mexico, for appellant; John H. Harrington, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GRANT

International Minerals and Chemical Corporation has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated July 13, 1981, providing notice of the readjustment of the terms of appellant's potassium leases, NM-02160, LC-044311A, LC-044311B, LC-044311C, and NM-045326.

Appellant's potassium leases were issued on November 1, 1956 (NM-02160), October 26, 1938 (LC-044311A through LC-044311C), and May 1, 1958 (NM-045326), "for a term of twenty years and so long thereafter as the lessee complies with the terms and conditions of the lease," as set forth by

section 3 of the Act of February 7, 1927, as amended, 30 U.S.C. § 283 (1976). The statute further provides that "at the end of each twenty-year period succeeding the date of the lease such reasonable adjustment of the terms and conditions thereof may be made therein as may be prescribed by the Secretary of the Interior." Id. In addition, the regulations implementing the statute which were in effect at the time appellant's leases were issued or extended, provided that:

The lessee will be notified whenever feasible, before the expiration of each such twenty-year period, of the proposed readjustment of terms or that no readjustment is to be made. Unless the lessee files objection to the proposed terms, or a relinquishment of the lease within 30 days after receipt of the notice, he will be deemed to have agreed to such terms.

43 CFR 194.21 (1954). This provision remained substantially unchanged at the end of the 20-year term of appellant's leases. See 43 CFR 3522.2-1(a) (1978).

Appellant's leases reiterate the Government's "right reasonably to readjust and fix royalties payable hereunder and other terms and conditions at the end of 20 years from the date hereof and thereafter at the end of each succeeding 20-year period during the continuance of this lease." The lease further provides for the giving of "notice of proposed terms" in order that the lessee may either object to the terms, relinquish the lease, or agree to the terms.

Appellant's leases reached the end of their 20-year terms or extensions on November 1, 1976, October 26, 1978, and May 1, 1978. By letters dated February 6, 7, and 8, 1979, the Chief, Mining Section, New Mexico State Office, BLM, informed appellant that the terms of its leases "are now subject to readjustment" and that the readjusted lease terms "will be sent to you as soon as the U.S. Geological Survey [Survey] completes its study on the royalty rates and new lease conditions." By memorandum dated February 3, 1978, the Chief, Branch of Lands and Minerals Operations, New Mexico State Office, BLM, had requested Survey recommendations regarding leases "due for readjustment." The Director, Survey, responded to the request by memorandum dated July 15, 1980, recommending certain readjusted lease terms.

In the July 1981 decision under appeal, BLM notified appellant of the readjusted lease terms to take effect "on the next lease anniversary date" and enclosed readjusted lease forms. Appellant was instructed to "signify acceptance * * * or file an appeal to the proposed terms, or a relinquishment of the leases within 30 days after receipt of this notice." This appeal followed.

In its statement of reasons for appeal, appellant contends that "BLM has no right to readjust any of the terms and provisions of these potassium leases three to five years after the renewal date." Appellant states that the deadline for readjustment was the end of the leases' 20-year terms. In particular, appellant objects to the increase from \$1 to \$2 per acre per year, provided by section 2(d) of the readjusted leases as the "minimum royalty." This increase was based on an amendment to the provision in the

Departmental regulations setting forth the minimum royalty for potassium leases. See 43 CFR 3503.3-2(b)(2) (45 FR 36035 (May 28, 1980)).

The issue of whether BLM may readjust lease terms after the end of the 20-year term of a lease was recently decided by the Court of Appeals in Rosebud Coal Sales Co. v. Andrus, 667 F.2d 949 (10th Cir. 1982), in the context of coal leases. Section 7 of the Mineral Lands Leasing Act, 30 U.S.C.A. § 207 (West 1971) (current version at 30 U.S.C. § 207 (1976)), provided that the Secretary may readjust coal lease terms "at the end of each twenty-year period succeeding the date of the lease." In addition, the applicable regulation in effect at the end of the 20-year period provided that: "The lessee will be notified of the proposed readjustment of terms or notified that no readjustment is to be made." 43 CFR 3522.2-1 (1974).

The court in Rosebud concluded that the end of the 20-year term of the lease marked the deadline for readjusting the terms of the lease and that, in the absence of notice of a proposed readjustment, BLM was thereafter precluded from readjusting the terms of the lease. Specifically, the court stated:

The time for readjustment of coal lease terms comes so infrequently that it must be assumed that timely consideration is given in the ordinary administrative process. If no action is taken by the Government for an extended time it is reasonable to assume that a decision was made not to take advantage of the opportunity provided by the Mineral Leasing Act. Thus a continuation of the old royalty rate and other lease provisions can be considered a choice then made by the administrators. When such a choice was made we find no provisions in the Act nor in the regulations permitting the Department to reverse the position it took originally at the prescribed time.

Rosebud Coal Sales Co. v. Andrus, supra at 952. The court concluded that BLM's attempt to readjust the terms of the lease after the end of the 20-year term without notice prior to the end of the 20-year term was contrary to both the statute and the terms of the lease contract. 1/ We believe that the decision in Rosebud is equally applicable in the case of potassium leases because of the identical requirements of the applicable statutes, i.e., readjustment "at the end of" the 20-year term of a lease, and the identical provision in the applicable regulations for notice of a proposed readjustment.

1/ We note that the holding of the court pertained to readjustments of the lease terms after the close of a 20-year period where notice of intent to make adjustment was not given prior to the end of the period. We are bound by this holding. It must be recognized, however, that the court did not foreclose readjustment after the end of a 20-year term where notice of a proposed readjustment is given prior to the end of the 20-year term. See Rosebud Coal Sales Co. v. Andrus, supra at 953; Kaiser Steel Corp., 63 IBLA 363, 367 (1982).

The Solicitor argues that BLM did effectively notify appellant, prior to the expiration of its leases, that its leases "would be readjusted, if not at the end of the lease period, then as soon thereafter as possible" (Response at 3). This notice was allegedly provided by an Environmental Analysis Record (EAR), entitled Preliminary Regional Environmental Analysis Record: Potash Leasing in Southeastern New Mexico (October 1975). The record indicates that appellant was sent a copy of the EAR shortly after publication and that appellant received the EAR on January 30, 1976.

The Solicitor's reference is apparently to the following language in the EAR at page I-(87):

There are 117 existing federal potash leases, covering 165,946 acres, within the study area. All these leases are scheduled for readjustment of lease terms at twenty-year adjustment increments. Thirty-five leases are due or are past due for adjustment by October 1, 1975. * * *

A complete list of existing potash leases in order of lease readjustment date is in Appendix D-7.

"Appendix D-7" lists, among others, appellant's leases and their respective issuance and readjustment dates.

We do not agree with the Solicitor's characterization of the language in the 1975 EAR as constituting notice to appellant that its leases "would be readjusted." The EAR merely referred to the status of certain leases, with respect to whether they were "scheduled for readjustment" (EAR at I-(87)). It did not indicate that any readjustment was contemplated or that any had been proposed. The applicable regulation provided for notice of a proposed readjustment. The EAR did not accomplish this purpose. Accordingly, in the absence of compliance with the notice provisions of the applicable statute and regulation, we must conclude that BLM was not entitled to readjust the terms of appellant's potassium leases after the end of their 20-year terms.

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 and the cases are remanded.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Edward W. Stuebing
Administrative Judge