

MARINE MINERALS CORP.

IBLA 83-242 Decided September 21, 1983

Appeal from decision of the Wyoming State Office, Bureau of Land Management, rejecting applications for preference right sodium leases. W-25391 and W-25392.

Set aside and referred for a hearing.

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 sec. 24 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. §262 (1976), is entitled to a hearing conducted in accordance with Sec. 5 of the Administrative Procedure Act, 5 U.S.C. §554 (1976), before lease application may be finally rejected for failure to prove such a discovery.

APPEARANCES: H. Michael Spence, Esq., Neil L. McClain, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Marine Minerals Corporation (Marine Minerals) appeals from the October, 18, 1982, 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 (1976), based upon sodium prospecting permits W-25391 and W-25392. 1/

1/ 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 Feb. 2, 1972. On Apr. 15, 1973, the permits were assigned to Marine Minerals. These assignments were subsequently approved by BLM.

In late 1973 and early 1974, Marine Minerals drilled an exploratory well on the land covered by each permit. Marine Minerals reported that it found an "amber colored sodium brine" in each well. Alleging a discovery

In a previous decision which dealt with the same lease applications, Marine Minerals Corp., 25 IBLA 153 (1976), this Board set aside and remanded the matter after the leases had been rejected by BLM. There we noted at page 155:

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.

In remanding the matter to BLM we noted that ordinarily a hearing would be appropriate, however, because of amended regulations regarding the issuance of preference right mineral leases which had been promulgated after the date of the BLM decision rejecting the applications, the matter was remanded rather than referred for a hearing. In so doing, however, we stated that "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) * * *." Id.

The October 18, 1982, BLM decision was based on a May 13, 1982, memorandum from the Minerals Management Service (MMS) which provided:

A review of both geologic reports [one prepared April 2, 1982, and one prepared October 8, 1974, copies of which were included] indicates that sufficient data was not obtained from the two wells drilled in the lands under permit to determine the reserves. Only the presence of the brine was verified and this was already known from results of previous drilling. Thus, no mineral deposits were discovered. Several dry wells have been drilled by * * * [the] holders of expired sodium prospecting permits W-25401 and W-25402 in the area shown by the applicant as the brine reserve. This [fact] casts doubt on the extent and quality

fn. 1 (continued)

of valuable deposits of sodium minerals based on such brine, Marine Minerals applied for the preference right sodium leases prior to the expiration of the prospecting permits.

of the brine in the lands under the captioned permits as claimed by Marine Minerals.

The supporting documents [previously submitted by Marine Minerals] do not prove the presence of a valuable sodium deposit. The analytical report by E. W. D. Huffman, Jr., does show by spectographic analysis, the various elements in the brine and possible uses that are purely conjectural. Likewise, the cost estimates in Mr. Eugene L. Grossman's report are approximations, not specific enough to serve as a valuation base for brine. Mr. Grossman admitted in his report that an evaporation pond should have been constructed to obtain the costs of producing the various elements as well as possible markets determined by actual research. All this would have been absolutely necessary to prove the presence of a marketable product, a valuable sodium deposit in the lands under permit. The U.S. Bureau of Mines and U.S. Geological Survey reports do not establish the value and extent of the brines, but discuss their compositions, characteristics of the various elements therein, and again possible uses.

The memorandum recommended that the Marine Minerals appeal be rejected as it had not proven that a valuable sodium deposit exists in the land under application and that the land is chiefly valuable for sodium leasing.

In the statement of reasons for appeal Marine Minerals asserts that sodium is an essential and primary constituent of brine; that Marine Minerals has established, and BLM has acknowledged, the presence of brine on the lands; that Marine Minerals has previously submitted to BLM numerous reports, voluminous data, various surveys, and other information sufficient to establish that Marine Minerals has discovered a valuable deposit of sodium and that the lands under application are chiefly valuable for that mineral. Marine Minerals further states that it is able to submit additional evidence concerning the nature and value of the brines and upon notice of the specific grounds of rejection of its application, would do so. Marine Minerals notes that the BLM decision merely states that MMS reported its conclusion that, "only brine" having been discovered, the discovery of a valuable deposit of sodium was not substantiated and, as such, BLM has not informed Marine Minerals of the basis for the conclusion that brine is not a valuable deposit of sodium or that the lands are not chiefly valuable for sodium. Citing the language of the previous decision, 25 IBLA at 155, Marine Minerals concludes that since BLM has again rejected its application, it is entitled to an evidentiary hearing whether it has discovered valuable deposits of sodium and whether the land is chiefly valuable for that material.

[1] Under the regulations governing preference right lease applications and specifically that governing hearing and appeal procedures, 43 CFR 3521.1- 1(j), if a prospecting permittee's application is rejected he may file

a notice of appeal and statement of reasons for appeal and the permittee shall have a right to a hearing before an Administrative Law Judge if he has alleged, in his application, facts sufficient to show that he is entitled to a lease. We find that Marine Minerals has alleged facts which, if proven, would entitle it to a lease. 2/ Accordingly, we hereby order a hearing to be held pursuant to 43 CFR 3521.1-1(j). At such hearing, Marine Minerals shall have both the burden of going forward and the ultimate burden of proof, and must show by a preponderance of the evidence that it discovered a valuable deposit of sodium as of January 31, 1974, the expiration date of both permits and that the subject lands are chiefly valuable for sodium. See 43 CFR 3521.1-1(j)(3). 3/

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 referred to the Hearings Division for action consistent herewith. The Administrative Law Judge assigned to the

2/ In 1976, following remand of the case to BLM, Marine Minerals requested an extension of time to file information pursuant to 43 CFR 3521.1-1(b). BLM granted this request and in 1977 Marine Minerals filed its documents. 43 CFR 3521.1-1(c) calls for BLM to furnish the permittee with the technical environmental analysis report and proposed lease form. The permittee is then required to furnish further information. BLM did not furnish the report and lease form as required. In addition, 43 CFR 3521.1-1(g) provides that if the permittee has not submitted the required information, "the authorized officer shall inform the permittee of the omissions and shall give the permittee an opportunity to submit the necessary information." BLM did not do this either. Instead, in 1982, after waiting 5 years for Survey/MMS to prepare its geological report and recommendation, BLM issued its decision denying the applications. Clearly, BLM did not follow these established procedures, but in this case it would serve no useful purpose to remand the case for compliance. Marine Minerals has submitted sufficient documents and alleged sufficient facts to warrant a hearing. It should not be penalized for BLM's failure to follow procedures or for Survey's/MMS' dilatory actions.

3/ Section 24 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 262 (1976), 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.)

case shall render a decision, which shall be, in the absence of a timely appeal to this Board, final for the Department.

Bruce R. Harris
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Will A. Irwin
Administrative Judge

