

UNITED STATES GYPSUM COMPANY (ON RECONSIDERATION)

IBLA 89-510

Decided July 31, 1990

Appeal from the April 29, 1989, decision of the Bureau of Land Management rejecting an application for a fringe acreage lease under 43 CFR Subpart 3565.

Petition for reconsideration granted; decision affirmed.

1. Mineral Lands: Leases

An application for a noncompetitive fringe acreage lease under 43 CFR Subpart 3565 is properly rejected when there is competitive interest in the resource on the part of the holder of another active mining unit in the area.

APPEARANCES: John W. Falvey, Esq., Senior Corporate Counsel, USG Corporation, Chicago, Illinois, for appellant.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

United States Gypsum Company (U.S. Gypsum) has filed a timely petition for reconsideration of our May 14, 1990, order dismissing its appeal for failure to file a statement of reasons. Although its May 24, 1989, letter constituting its "formal Notice of Appeal" stated that a "statement of reasons for this appeal will be filed" -- and we dismissed because no such statement was received -- the company argues that the letter "includes a sufficient statement of reasons to satisfy the intent of [43 CFR 4.412]."

On May 4, 1988, U.S. Gypsum filed with the Bureau of Land Management (BLM) an application for a fringe acreage lease to mine gypsum and associated minerals "found on Federal Lands (Hoosier National Forest) that lie adjacent to reserves of U.S. Gypsum Company's Shoals, Indiana, underground mine." A fringe acreage lease may be issued noncompetitively for known deposits of hardrock minerals adjacent to existing mines on non-Federal lands when the Federal lands can be mined only as part of the existing mining operation. 43 CFR 3560.1. See also 43 CFR 3565.1.

Accompanying the application was a map showing the lands proposed for the lease as located adjoining U.S. Gypsum's mineral reserves in

secs. 35 and 36, T. 3 N., R. 3 W., and sec. 2, T. 2 N., R. 3 W., Martin County, Indiana, and copies of the deed to and the authorization to mine the gypsum in those reserves. See 43 CFR 3565.3(c)(3), (c)(4). 1/

On July 14, 1988, the Chief, Northern Adjudicative Section, Branch of Minerals Adjudication, Eastern States Office, BLM, requested a report with recommendations from the Assistant District Manager, Division of Solid Minerals, Rolla, Missouri:

Please furnish a report with your recommendations in accordance with 43 CFR 3565.2 with emphasis on the following:

1. Whether or not this application is in an area of competitive interest to holders of other active minings [sic] units in the area. [See 43 CFR 3565.2(c).]
2. Whether or not the lands applied for lack sufficient reserves of the mineral resource to warrant independent development.

See 43 CFR 3563.2(d).

On September 19, 1988, Gold Bond Building Products, a division of National Gypsum, filed a letter with the Rolla office of BLM stating:

We have reviewed the legal description of the fringe acreage lease located in the Hoosier National Forrest [sic], Martin County, Indiana, and at this time are interested in applying for competitive bidding. We will be investigating the possible interest closer this next month and will inform you of the findings at a later date.

No further communication from National Gypsum is contained in the record.

On October 11, 1988, the Rolla office wrote the State Director, BLM:

It is believed that both U.S. Gypsum and National Gypsum have mine and processing facilities near enough to the application tract to allow development. We therefore recommend that the U.S. Gypsum fringe acreage lease application be rejected and that competitive leasing procedures be initiated in accordance with 43 CFR 3564.

On April 25, 1989, BLM issued a decision stating that the "Rolla Office * * * has informed us that the National Gypsum Company has expressed competitive interest in the area in which the subject application was filed. Therefore, [the application] must and is hereby rejected, because the lands applied for are in an area of competitive interest, 43 CFR 3565.2(c) * * *."

1/ By letter dated Aug. 22, 1988, U.S. Gypsum corrected the legal description of the lands it wished to lease to conform to the map.

U.S. Gypsum's May 24, 1989, letter, "written as our formal Notice of Appeal from the decision," states in part:

It is applicant's position that the subject 480 acres cannot be economically mined as an independent parcel and such mining would be practical and consistent with the interests of the public only by extension of a subsurface operation, such as is intended by the applicant. Any expression of interest which suggests a different mining approach should not be considered as being serious interest and certainly not without a concrete demonstration of intent and ability to conduct mining which will provide maximum contribution to multiple-use land policy.

We understand that the basis for rejection of the application for the fringe area lease is the expression by National Gypsum of a competitive interest in said fringe area lease. However, one of the necessary criteria for a fringe area lease is the ownership or control of a mining operation adjacent to the Federal land to be mined. Based on our information, National [Gypsum] does not own or control an adjacent mining operation and, therefore, does not satisfy the criteria for a fringe area and could not, therefore, have a valid competitive interest!

We will accept this as an adequate statement of reasons and therefore grant U.S. Gypsum's petition for reconsideration.

The provisions governing fringe acreage leases were adopted in 1986. 51 FR 15204, 15253 (Apr. 22, 1986); 51 FR 25204 (July 11, 1986). They provide that "[l]ands available for leasing which are known to contain a hardrock mineral deposit that extends from an adjoining Federal lease or from privately held lands may be leased noncompetitively either by issuance of a new lease for these lands or by adding such lands to an existing Federal lease." 43 CFR 3565.1. Before a fringe acreage lease may be issued, the authorized officer shall determine five specific items, including that "[t]he mineral deposit is not in an area of competitive interest to holders of other active mining units in the area." 43 CFR 3565.2(c).

U.S. Gypsum argues that "National Gypsum does not own or control contiguous land or mineral rights [to the lands that are covered by U.S. Gypsum's application] and, therefore, could not have competitive interest in a fringe area lease of the area, because they do not satisfy the criteria in 43 CFR 3565.2(a)" 2/ (Petition for Reconsideration at 1-2 (emphasis supplied)).

Although this fact is apparently supported by the map submitted by U.S. Gypsum with its application (which shows National Gypsum's plant in sec. 21 of T. 3 N., R. 3 W., to the north and west of the lands applied for), BLM's April 25, 1989, decision rejected U.S. Gypsum's application

2/ 43 CFR 3565.2(a) requires the authorized officer to find that the lands applied for "are contiguous to an existing Federal lease or to non-federal lands owned or controlled by the applicant."

because National Gypsum indicated it was interested in leasing the gypsum U.S. Gypsum had applied for, not because National Gypsum, too, may have qualified for a fringe acreage lease. U.S. Gypsum's application states that "[t]he part of the deposit which is shared by both companies in T. [3] N., R. 3 W. apparently continues (based on current drilling information) to the south-southeast from U.S. Gypsum's eastern part of the deposit but not from National Gypsum's western part of the deposit."

[1] As indicated above, a fringe acreage lease may be issued noncompetitively. When BLM determines, as it did in this case, that there is competitive interest in the resource, then it may not issue a lease noncompetitively, but must follow the procedures for competitive leasing set forth in 43 CFR Subpart 3564.

Therefore, in accordance with the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, U.S. Gypsum's petition for reconsideration is granted and BLM's April 25, 1989, decision rejecting U.S. Gypsum's application for a fringe acreage lease under 43 CFR Subpart 3565 is affirmed.

Will A. Irwin
Administrative Judge

I concur:

R. W. Mullen
Administrative Judge