



GENERAL CHEMICAL (SODA ASH) PARTNERS

176 IBLA 1

Decided September 10, 2008



United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

GENERAL CHEMICAL (SODA ASH) PARTNERS

IBLA 2007-63

Decided September 10, 2008

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting applications to renew four sodium leases. WYW081577, WYW081578, WYW0225916, and WYW0225918.

Affirmed.

1. Sodium Leases and Permits: Leases

A Federal sodium lessee's preferential right of renewal for successive 10-year periods under 30 U.S.C. § 262 (2000) does not entitle the lessee to renewal of the lease. It gives the lessee the right to be preferred against other parties, should the Secretary, in his discretion, decide to continue leasing. The Secretary may exercise his discretionary authority to fix new terms at the time of renewal, including conditioning further renewal upon the lessee's reasonable diligence in developing the lease.

2. Sodium Leases and Permits: Leases

Where a Federal sodium lease is eligible for renewal if at the end of the lease's current term sodium is being produced in paying quantities from the lease, or from the "contiguous mining block" that includes the lease, the contiguous mining block does not include other leases in a larger area or region owned by the same lessee that do not overlie a common mineral deposit and that would not be mined in the natural progression of mining in a mine that is producing at the time of lease renewal.

3. Sodium Leases and Permits: Leases

A lease term that requires some production from the contiguous mining block that includes the lease at the end of the current

term for the lease to be eligible for further renewal is not inconsistent with lease and regulatory provisions allowing a lessee to pay minimum royalty in lieu of production for a particular year. Payment of minimum royalty does not satisfy the separate production requirement for renewal eligibility.

4. Administrative Procedure: Adjudication

In the absence of any judicial or administrative challenge to inclusion of a new lease term in renewed leases, whatever arguments could have been raised administratively regarding the alleged unlawfulness of the term are barred under the doctrine of administrative finality.

5. Sodium Leases and Permits: Leases

A fundamental norm of administrative procedure requires an agency to treat like cases alike. The Board properly affirms a BLM decision rejecting an application for renewal of a sodium lease where the appellant has not provided a reasoned justification for treating the appellant's leases in a different manner from other leases that were not renewed.

APPEARANCES: John C. Martin, Esq., Henry Chajet, Esq., Lawrence S. Roberts, Esq., and Amy Chasanov, Esq., Washington, D.C., for appellant; Lance Wenger, Esq., Office of the Solicitor, U.S. Department of the Interior, Lakewood, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HEATH

General Chemical (Soda Ash) Partners has appealed from a December 5, 2006, decision of the Wyoming State Office, Bureau of Land Management (BLM), rejecting its applications to renew four Federal sodium leases (WYW081577, WYW081578, WYW0225916, and WYW0225918). BLM rejected the renewal applications because General Chemical had not met the diligence requirement embodied in section 14(c) of the lease terms. For the reasons explained below, we affirm BLM's decision.

BACKGROUND

A. *Sodium Leasing, Lease Renewal, and Diligence Requirements*

[1] BLM issues sodium leases under section 24 of the Mineral Leasing Act (MLA), 30 U.S.C. § 262 (2000), for "a period of twenty years, with preferential right

in the lessee to renew for successive periods of ten years upon such reasonable terms and conditions as may be prescribed by the Secretary of the Interior unless otherwise provided by law at the expiration of such period.” This *preferential* right of renewal does not *entitle* the lessee to renewal of the lease but “gives the renewal lease applicant the legal right to be preferred against other parties, should the Secretary, in the exercise of his discretion, decide to continue leasing.” Sol. Op., “Sodium Lease Renewals,” M-36943, 89 I.D. 173, 178 (1982) (1982 Sol. Op. or 1982 Solicitor’s Opinion). The Secretary may exercise his discretionary authority in renewing a lease in the same manner as in issuing an initial lease. *Id.* This includes authority to fix new terms at the time of lease renewal, including a requirement that conditions further renewal of the lease upon the lessee’s exercise of reasonable diligence in the development of the lease. *Id.* at 184.

General Chemical’s leases are within the Known Sodium Leasing Area (KSLA) in the Green River Basin (GRB) region of Wyoming which contains the largest known deposit of trona in the world. BLM, *Sodium Royalty Rate and Diligent Development Analysis* (June 1993) (SRRDDA), Answer Ex. A, at 71. Trona is a major source of sodium compounds, including sodium carbonate (soda ash) and sodium bicarbonate. In the early 1990s, BLM received expressions of interest in exploring for sodium resources and in obtaining competitive sodium leases for lands within this area. In addition, in 1992, BLM received renewal applications for approximately 40 existing sodium leases set to expire in calendar year 1993, and the four leases in this appeal were among those subject to renewal. This interest in leasing prompted BLM to review the lease terms and conditions to be attached to new and renewed Federal sodium leases in the GRB. BLM’s concern focused on two primary issues: (1) royalty rates for new and renewed sodium leases in the GRB, and (2) the potential need for a due diligence requirement for those leases. BLM held a public meeting on January 14, 1993, to solicit comments concerning these issues and provided an opportunity to submit written comments until February 15, 1993.¹

In June 1993, BLM completed its review of the royalty and diligence issues and published its SRRDDA. The report states that 57.2 percent of the sodium in the GRB KSLA is Federally owned, 4.89 percent is owned by the State of Wyoming, and 37.9 percent is privately owned, including sodium underlying land owned and managed by Union Pacific Resources (UPR) which “has traditionally taken a more aggressive approach to trona royalties and bonus leasing on their lands.” *Id.* at 7.

At the time of the report, there were 54 Federal leases in the GRB, 10 of which were held by General Chemical. SRRDDA at 71, 72 (Table 1). Nine of General

¹ General Chemical’s representative attended this meeting and was the first industry representative to comment. General Chemical submitted a transcript of the meeting as Ex. 4 to its Statement of Reasons (SOR) in the instant appeal.

Chemical's leases were being considered for renewal in 1993, including the four in this appeal. *Id.* at 74 (Table 2). Of the 54 Federal leases, only 19 had been in production and one lease was operated on an experimental basis. *Id.* at 76. General Chemical held three of those 19 leases. *Id.* BLM identified a "trend . . . to require that leases issued under the [Mineral Leasing] Act be developed within a specific time or they are not renewed or readjusted," noting in particular the statutory requirement that coal leases develop and produce one percent of recoverable reserves within 10 years of issuance or readjustment. *Id.* at 75.

BLM identified two primary reasons why only a limited number of Federal sodium leases had actually produced: (1) a checkerboard pattern of Federal, private, and State land ownership combined with the fact that the areal progression of a trona mine is quite slow, because each producing block contains enormous reserves that can meet the needs of a plant for several years, and (2) UPR's strong effort to assure production from its lands by requiring that a set percentage of a lessee's mine production comes from UPR lands. *Id.* at 78. Federal lessees, on the other hand, had the option to produce sodium or pay a minimum royalty of \$2 per acre, which BLM found was not an effective incentive to produce sodium from Federal land or prevent speculation. *Id.* at 79. The SRRDDA recommended that a notice of due diligence requirement be attached to all new and renewed sodium leases within Wyoming. The SRRDDA stated that including such a provision in new and renewed sodium leases would "advise[] lessees that if a lease is not in compliance with the due diligence requirement at the end of the renewal period, the lease will not be renewed." SRRDDA at 88.

Almost three years elapsed before a decision on the SRRDDA recommendations was made. Meanwhile, leases for which timely renewal applications had been filed remained in effect beyond the end of their terms under section 9(c) of the Administrative Procedure Act (APA), 5 U.S.C. § 558(c) (2000). *See* 1982 Sol. Op., 89 I.D. at 179.

On February 22, 1996, Bob Armstrong, Assistant Secretary – Land and Minerals Management, issued a memorandum to the Wyoming State Director, BLM (Armstrong Memorandum) instructing "that all sodium leases hereafter issued or renewed shall include a provision requiring rejection of an application for renewal of a sodium lease if, at the end of its then current term, sodium is not being produced in paying quantities from the lease or the BLM-approved contiguous mining block in which the lease is included." He declared it "the responsibility of BLM's authorized officers to act in conformance with these policies when exercising their delegated authorities in issuing and renewing sodium leases in the Green River Basin in Wyoming." Armstrong Memorandum, Answer Ex. B, at 3-4. The Memorandum included the text of the required stipulation. *Id.*, Attachment A.

On May 31, 1996, BLM issued a decision to General Chemical establishing the terms and conditions for the nine leases for which renewal had been sought, including the four leases involved in this appeal. Those new terms and conditions included section 14(c), which provided as follows:

- (1) The authorized officer will reject an application for renewal of this lease if, at the end of the lease's current term, sodium is not being produced in paying quantities from:
 - (i) This lease; or
 - (ii) The contiguous mining block in which this lease is included.
- (2) For the purposes of this provision:
 - (i) The "contiguous mining block" is an area approved by the authorized officer, which includes lands covered by this lease and which may include lands covered by other federal and/or non-federal sodium leases, each of which must be accessible using standard mining practices from at least one adjacent lease within such area; and
 - (ii) "Sodium is not being produced in paying quantities" when the gross value of sodium compounds and other related products produced from this lease or the contiguous mining block at the point of shipment to market does not yield a return in excess of all direct and indirect operating costs allocable to their production.

The same terms were to be included in the other GRB leases to be renewed. It appears that no objections were filed. General Chemical and other lessees executed the renewed leases, which became effective on August 1, 1996. Under the 10-year renewal term, the leases would expire on August 1, 2006.

B. *Application of Section 14(c) at the Expiration of the Renewal Term*

Almost two years before those GRB leases would expire, one of the lessees, Wold Trona Company, Inc., anticipated that economic circumstances would prevent it from meeting the diligence requirement for five of its leases. In a letter dated August 9, 2004, Wold requested that BLM waive the diligence requirement. Answer Ex. G. On April 28, 2005, in a memorandum to the BLM Wyoming State Director, the BLM Director approved the requested waiver for two of the five leases, finding that they were "in a contiguous mining block that has a State approved mine permit." Answer Ex F. at 2. BLM denied a waiver of the stipulation for Wold's other three leases, finding that they "have not yet produced any trona, nor are they within an approved State mine permit."²

² By memorandum dated Apr. 18, 2005, the BLM Director requested the Assistant Secretary's approval of the waiver of the diligence requirement for two of Wold's

(continued...)

Another sodium lessee in the GRB, Sesqui Mining, Inc., sought a waiver of the diligence requirement when it applied for renewal of four leases in February 2006 because it was developing a new technology for recovering sodium resources. On November 30, 2006, BLM rejected Sesqui's application for renewal in a decision that this Board affirmed. *Sesqui Mining, Inc.*, IBLA 2007-72 (Mar. 26, 2008). General Chemical's renewal application was rejected five days after Sesqui's application was rejected.

C. *The Instant Appeal and General Chemical's Arguments*

General Chemical appealed the rejection of its applications. It asserts four principal arguments. (1) The leases are eligible for renewal under section 14(c)(1)(ii) of the lease terms because there was production from a contiguous mining block that includes the subject leases. SOR at 12-14. (2) Payment of minimum royalties satisfies the diligence requirements of the lease, including the requirements of section 14(c). *Id.* at 15-19. (3) Inclusion of section 14(c) in the lease terms was improper, and section 14(c) is unenforceable, because it was imposed by the Armstrong Memorandum as a substantive rule without complying with the notice-and-comment rulemaking requirements of the APA, 5 U.S.C. § 553 (2000), and because BLM violated 30 U.S.C. § 187 (2000) by imposing diligence requirements that conflict with state law. *Id.* at 22-29, 32-34. (4) BLM acted arbitrarily and capriciously when it renewed two of Wold's leases but not General Chemical's. *Id.* at 19-22, 30-32.

On May 27, 2008, General Chemical requested a hearing before an Administrative Law Judge under 43 C.F.R. § 4.415 to make findings of fact regarding (1) whether General Chemical's leases should be considered a contiguous mining block for purposes of Section 14(c); and (2) whether BLM was arbitrary and capricious in renewing Wold's leases, even though Wold did not satisfy section 14(c), but not General Chemical's. Request for a Hearing at 2. General Chemical also asserted that a hearing was warranted to address several other "miscellaneous evidentiary issues" related to "various legal and factual arguments" in its SOR. *Id.*

As the court recognized in *Hoyle v. Babbitt*, 129 F.3d 1377, 1386 (10th Cir. 1997), this Board's authority to grant a hearing pursuant to 43 C.F.R. § 4.415 is purely discretionary. We have held that a hearing is necessary only when there is a material issue of fact requiring resolution through the introduction of testimony and other evidence. In the absence of such an issue, no hearing is required. *Vanderbilt Gold Corp.*, 126 IBLA 72, 77 (1993), and cases cited; see *United States v. Consolidated*

² (...continued)

leases and denial of a waiver for the other three. The Acting Assistant Secretary concurred on Apr. 22, 2005. SOR Ex. 21.

Mines & Smelting Co., 455 F.2d 432, 453 (9th Cir. 1971). In light of the analysis below, we find that there is no disputed material issue of fact that requires resolution through the introduction of testimony and other evidence that would alter the disposition of the appeal, and that the appeal can be resolved on the documentary submissions. Therefore, we deny General Chemical's request for a hearing. See, e.g., *F.W.A. Holdings, Inc.*, 167 IBLA 93, 98 (2005); *Natec Minerals, Inc.*, 143 IBLA 362, 373-74 (1998), and cases cited; *Felix F. Vigil*, 129 IBLA 345, 347 (1994); *Vanderbilt*, 126 IBLA at 77; *R. A. Mikelson*, 26 IBLA 1, 5 (1976).

ANALYSIS

I. *There Was No Production from a Contiguous Mining Block that Includes General Chemical's Leases*

[2] General Chemical argues that the condition for renewal under section 14(c) of the lease terms may be satisfied not only if sodium is produced in paying quantities from the lease itself but also from "lands adjacent to those covered by the leases." SOR at 12. Acknowledging that sodium was not produced in paying quantities from any of the four leases that are the subject of this appeal, General Chemical asserts that production from some of its other leases constitutes production from "[t]he contiguous mining block in which this lease is included" under section 14(c)(1)(ii) of the lease. *Id.* General Chemical quotes the definition of "contiguous mining block" in section 14(c)(2)(i) of the lease terms:

(i) The "contiguous mining block" is an area approved by the authorized officer, which includes lands covered by this lease and which may include lands covered by other federal and/or non-federal sodium leases, each of which must be accessible using standard mining practices from at least one adjacent lease within such area[.]

General Chemical focuses on the term "adjacent," asserting that it can be stretched to include parcels that are more than 10 miles apart.³ It relies on the definition of "adjacent" in the Sixth Edition of *Black's Law Dictionary* (1990), at 41:

Lying near or close to; sometimes, contiguous; neighboring. *Adjacent* implies that the two objects are not widely separated, though they may not actually touch, [. . .] while *adjoining* imports that they are so joined or united to each other that no third object intervenes.

³ See Declaration of Randy T. Pitts, SOR Ex. 14, and attached map.

Quoted at SOR at 12.⁴ General Chemical asserts that the subject leases are “adjacent” (and therefore “contiguous” within the meaning of the lease term) because they are “in close proximity [as] demonstrated by the General Chemical’s longstanding right-of-way for truck haulage of sodium solution and its efforts to acquire a 10.6 mile right-of-way for a pipeline directly connecting the leased lands . . . to its other leases and thereafter underground to General Chemical’s processing plant” SOR at 13.

This argument is fatally flawed in at least two respects. First, the lease term expressly defines “contiguous mining block” as an area “approved by the authorized officer” — the BLM authorized officer. As BLM notes, it has not approved a mining block that includes the subject leases and other producing leases. Answer at 11. In the absence of an *approved* mining block in effect at the time for renewal of the lease, General Chemical’s argument necessarily fails.

Second, the inference General Chemical draws from the *Black’s* definition of the word “adjacent” takes the term out of context and ignores the purpose of the lease term. The lease term expressly requires that each lease within the contiguous mining block “must be accessible using standard mining practices from at least one adjacent lease.” In most cases, a trona deposit likely will underlie several properties or leases. As the contiguous trona deposit is mined, work will progress from one lease to the next lease which adjoins or abuts it — *i.e.*, an “adjacent” lease. A lease that does not overlie the same trona deposit as the lease being mined and that is separated by several miles from the lease being mined will not be “accessible using standard mining practices” from the lease being mined. The clear intent and purpose of section 14(c) is to make eligible for renewal those leases whose deposits would be mined in the natural progression of mining in a mine that is producing at the time of lease renewal.

II. *Payment of Minimum Royalty Does Not Satisfy the Requirement of Section 14(c).*

As General Chemical notes, SOR at 16, BLM’s regulations at 43 C.F.R. § 3504.25 provide that a lessee “must *either* produce a minimum amount *or* pay a minimum royalty in lieu of production each lease year.” (Emphasis added.) General Chemical argues that these regulations do not require production in paying quantities and applying section 14(c) of the lease terms conflicts with the regulations. SOR at 15-16. General Chemical asserts that because it has paid minimum royalty, it has satisfied the diligence requirements of section 2(b)(2) of the lease terms, which provides: “This lease shall require a minimum annual production or the payment of minimum royalty in lieu of production for any particular lease year, beginning with

⁴ The same edition of *Black’s Law Dictionary* (at 320) defines “contiguous” as follows: “In close proximity; neighboring; adjoining; near in succession; in actual close contact; touching at a point or along a boundary; bounded or traversed by.”

the first full year of the renewed lease.” General Chemical argues that BLM’s rejection of its renewal application “reads section 2(b)(2) out of the leases at issue by trumping it with section 14(c)(1),” SOR at 18, asserting that lease terms must be construed to harmonize to give meaning to all terms. Therefore, General Chemical concludes, “the [minimum] royalties paid by General Chemical over the past decade satisfy the production requirements of Section 14(c).” *Id.*

[3] In making this argument, General Chemical ignores the question that both the regulation and section 2(b)(2) of the lease terms address. The preamble excerpt that General Chemical quotes begins with the statement: “Two comments objected to the requirement of the proposed rulemaking for written consent of the authorized officer before the lessee would be allowed to pay minimum royalty in lieu of production *on an annual basis.*” 51 Fed. Reg. 15204, 15206 (Apr. 22, 1986) (emphasis added). Section 2(b)(2) of the lease terms addresses paying minimum royalty in lieu of production “for any particular lease year.” The option to pay minimum royalty simply means the lessee will not potentially lose the lease for violating the minimum production requirement during a particular lease year. It has nothing to do with whether the Secretary, in looking at production from the mine of which the lease is a part at the end of the current lease term, will renew the lease for an additional term. We find no inconsistency between the provisions allowing a lessee to pay minimum royalty in lieu of production from the lease for a particular year during that term and a provision requiring some production from the contiguous mining block that includes the lease at the end of the 10-year renewal term for the lease to be eligible for further renewal.

Moreover, “[t]he Secretary has the authority to encourage production and development of federally leased sodium resources *both through minimum development and production requirements and minimum royalties* imposed on each lease.” 1982 Sol. Op., 89 I.D. at 185 (emphasis added). As stated earlier, the decision to include section 14(c) was based on the finding that minimum royalties were *not* an effective incentive to produce sodium from Federal land. SRRDDA at 79. Indeed, General Chemical’s position in this appeal corroborates this finding rather than refutes it. Neither 43 C.F.R. § 3504.25 nor section 2(b)(2) of the lease terms is an entitlement to not produce and yet keep the lease in force indefinitely or to renew it without any production from the lease, or from the contiguous mining block that includes the lease, having occurred. There is no incompatibility between the provision for minimum royalty and the diligence requirement in section 14(c).

III. *General Chemical Cannot Now Challenge Inclusion of Section 14(c) in the Lease Terms.*

As noted previously, General Chemical argues that inclusion of section 14(c) in the lease terms was improper on two grounds, namely (1) the Armstrong

Memorandum imposed it as a substantive rule without complying with APA notice-and-comment rulemaking requirements; and (2) it violates 30 U.S.C. § 187 (2000) by imposing diligence requirements that conflict with state law.

[4] These challenges to the inclusion of section 14(c) in the lease terms are now barred. The section 14(c) stipulation would have been ripe for challenge at the time the renewal lease was entered into in 1996. Ordinarily, when BLM exercises its discretionary authority to impose a new term or condition upon the renewal or readjustment of a mineral lease, the new condition may be challenged when it is first imposed. *E.g.*, *J. R. Simplot Co.*, 173 IBLA 129 (2007) (readjusted phosphate lease); *Blackhawk Coal Co.*, 68 IBLA 96 (1982) (readjusted coal lease).⁵

In the absence of any judicial or administrative challenge to the new section 14(c) after it was included in renewed leases, whatever arguments that General Chemical could have raised administratively regarding the alleged necessity for notice-and-comment rulemaking and an alleged violation of 30 U.S.C. § 187 (2000) are now barred. When a lessee executes a lease containing the new stipulation without challenging it, the doctrine of administrative finality precludes the lessee from contending that the requirement was not properly imposed when he later appeals an action by BLM enforcing the stipulation. *Ark Land Co.*, 133 IBLA 31, 37 (1995); *George A. Haddad*, 109 IBLA 394, 396-97 (1989). Further, an administrative appeal directly challenging inclusion of section 14(c) in the lease terms for alleged failure to follow APA procedures would be time-barred now under 43 C.F.R. § 4.411.

Even if the Armstrong Memorandum were a substantive rule as General Chemical asserts, General Chemical could have sued for judicial review under the APA, 5 U.S.C. §§ 701-706 (2000), to challenge it at any time after it was issued. General Chemical certainly could have sued to challenge it when it was applied by the inclusion of section 14(c) in the renewed leases.

We recognize that the present record does not establish when General Chemical first knew of the Armstrong Memorandum. But even if General Chemical was not aware of the memorandum at the time the renewed lease was entered into in 1996 — and even if the memorandum were regarded as a substantive rule requiring notice-and-comment procedures — it would not affect the outcome of this appeal. The Armstrong Memorandum did not of its own force change or affect General Chemical's or any other private party's obligations under existing legal relationships

⁵ If, as General Chemical asserts, SOR at 6, an administrative objection to adding section 14(c) would have been futile because the Assistant Secretary issued the memorandum (an issue we need not address or decide here), General Chemical could have sued for judicial review to challenge the inclusion of section 14(c) when the renewed lease came into effect.

with the government, whether regulatory or contractual. The question for General Chemical in 1996 was whether it wanted to enter into a renewed lease relationship with the government on the terms offered, which included the term it now disputes. General Chemical answered that question in the affirmative by voluntarily signing the renewed lease. Nothing in the Armstrong Memorandum compelled it to do so. A lessee cannot compel the Secretary or his subordinates, 10 years after the fact, to offer leases on different terms than the Secretary chose to offer them. The diligence requirement in the terms of the renewed lease instrument became binding on General Chemical only when General Chemical chose to accept it.⁶

IV. *Renewal of Two of Wold's Leases But Not General Chemical's Leases*

General Chemical argues that the APA prohibits an agency “from treating similarly situated petitioners differently without providing a sufficiently reasoned justification for the disparate treatment.” SOR at 30, quoting *Muwekma Ohlone Tribe v. Kempthorne*, 452 F. Supp. 2d 105, 115 (D.D.C. 2006). General Chemical asserts that there is a similarity between its leases and the two leases for which Wold was granted a waiver because there was no production from any of the leases or from other Wold leases to satisfy the requirement of section 14(c). SOR at 30-32.⁷

⁶ For the same reason, we do not believe the Armstrong Memorandum is a substantive rule requiring APA notice-and-comment procedures. The Armstrong Memorandum constrained BLM's discretion only with regard to the terms on which leasing or lease renewal would be *offered*. It did not create rights, did not impose obligations on regulated non-Federal parties, and did not effect a change in existing law, rules or lease terms. This clearly distinguishes the instant case from the several cases on which General Chemical relies, SOR at 23-24. Those cases involve situations in which an agency statement created a “norm” which constrained agency discretion in such a way as to have a present binding effect on a regulated non-Federal party or class of parties, and thus determine the regulated party's rights and obligations. *See, e.g., Utility Air Regulatory Group v. Environmental Protection Agency*, 320 F.3d 272, 278 (D.C. Cir. 2003), in which the court recognized a similar distinction.

Nor is there any authority for the proposition that the Secretary may not include a particular term in offering new or renewed leases unless that term has been adopted by notice-and-comment rulemaking. As quoted above, section 24 of the MLA, 30 U.S.C. § 262 (2000), under which the subject leases were issued and initially renewed, provides for a preferential right to renew “upon such reasonable terms and conditions as may be prescribed by the Secretary” While the Secretary *could* choose to prescribe certain lease terms by rule using the MLA's rulemaking authority at 30 U.S.C. § 189 (2000), he is not *required* to do so.

⁷ General Chemical appears to argue that BLM erred in granting Wold a waiver.

(continued...)

As stated above, BLM waived the diligence requirement of section 14(c) for two of Wold's leases because they were "in a contiguous mining block that has a State approved mine permit." Answer Ex F. at 2. BLM denied a waiver stipulation for Wold's other three leases, finding that they "have not yet produced any trona, nor are they within an approved State mine permit." *Id.* BLM defends granting this waiver for the two leases on a "lease-specific" basis while denying the waiver for the other three leases that had been requested for non-lease-specific reasons such as a decline in the domestic soda ash industry. Answer at 22-23. BLM maintains that General Chemical's leases are equivalent to the three Wold leases that were not renewed. *Id.* at 23. General Chemical contends that the distinction BLM relies on lacks merit because Wold's mining plan was obtained in 1995, before the leases became subject to the diligence requirement. SOR at 30-31.

[5] "A fundamental norm of administrative procedure requires an agency to treat like cases alike." *Westar Energy, Inc. v. Federal Energy Regulatory Commission*, 473 F.3d 1239, 1241 (D.C. Cir. 2007); *see also Colorado Interstate Gas Co. v. Federal Energy Regulatory Commission*, 850 F.2d 769, 774 (D.C. Cir. 1988) ("dissimilar treatment of evidently identical cases . . . seems the quintessence of arbitrariness and caprice"). In this case, General Chemical's argument cuts two ways; to reverse BLM, we would have to supply a "sufficiently reasoned justification" for treating General Chemical's leases in a different manner from all of the other leases that were not renewed, including the other three Wold leases and the leases involved in *Sesqui Mining, Inc.*, IBLA 2007-72 (Mar. 26, 2008). We find no basis for doing so.

The fact that two of Wold's leases were in a contiguous mining block with a State-approved mining permit brings those leases an important step closer to production. Further, BLM had approved the contiguous mining block.⁸ Commencement of mining operations would result in the two Federal leases meeting the requirements of section 14(c). In this circumstance, though BLM was not compelled to do so, granting a waiver of the section 14(c) requirement had a rational basis. No such considerations are involved in the instant appeal. Here, the leases in

⁷ (...continued)

Even if BLM did err in so doing, we have no jurisdiction over that action here. As an administrative appellate tribunal, we do not exercise supervisory authority over BLM outside the context of deciding an appeal over which we have jurisdiction. *See Southern Utah Wilderness Alliance*, 172 IBLA 183, 184-85 (2007); *Simons v. BLM*, 135 IBLA 125, 129 (1996). The question in this case is whether BLM acted arbitrarily in not waiving the requirement of section 14(c) for General Chemical's leases after it had done so for two of Wold's leases.

⁸ SOR Ex. 16 "Analysis of Options," attached to telefax cover sheet from Mary Linda Ponticelli, BLM, to Mavis Love, BLM, dated Mar. 16, 2005, at 3.

question are not within a BLM-approved contiguous mining block. Nor is there a State-approved mining permit for such a block. We note that in a case involving BLM's denial of a suspension and the termination of three readjusted non-producing coal leases, the court "conclude[d] that the agency did not act arbitrarily and capriciously when it considered whether [the lessee] had received authorization to mine his leases" in denying a suspension. *Hoyle v. Babbitt*, 129 F.3d at 1386.⁹

For these reasons, we find that BLM's refusal to grant a waiver of section 14(c) for General Chemical's leases was not arbitrary or capricious, notwithstanding having granted a waiver for two of Wold's leases.

CONCLUSION

For the reasons explained above, we conclude that BLM properly rejected General Chemical's applications to renew the leases.

Any arguments by General Chemical not specifically addressed herein have been considered and rejected.

⁹ General Chemical asserts that in view of its investment of more than \$1.3 million in research and development, "application of section 14(c) penalizes diligent development" and produces results that conflict with Congress' intent to promote that development. SOR at 20-21. However, as BLM points out, General Chemical does not dispute the fact that there have been no development activities on these particular leases since they were last renewed in 1996. Answer at 17. General Chemical further argues that BLM's "stringent application" of the diligence requirement "is clearly out of step with Congress' recent changes *relaxing* production for other important federal resources," SOR at 22 (emphasis in original), citing amendments to section 6(b) of the Geothermal Steam Act, 30 U.S.C. § 1005(b) (West Supp. 2006), enacted by section 231 of the Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594, 668-69 (2005). We do not discern the relevance to sodium leases of statutory changes to geothermal lease renewal requirements. The fact that General Chemical believes that allowing longer periods without development might encourage investment — an uncertain proposition in any event — does not demonstrate legal error in BLM's refusal to grant a waiver and its rejection of General Chemical's renewal application.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed.

_____/s/_____
Geoffrey Heath
Administrative Judge

I concur:

_____/s/_____
R. Bryan McDaniel
Administrative Judge