

INTERIOR BOARD OF LAND APPEALS

Lasmo Oil & Gas, Inc.

136 IBLA 389 (November 5, 1996)

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LASMO OIL & GAS, INC.

IBLA 95-140

Decided November 5, 1996

Appeal from a decision of the Acting Deputy Commissioner, Bureau of Indian Affairs, denying appeal of an order of the Minerals Management Service assessing late payment interest charges for late royalty payments. MMS-93-0736-IND.

Affirmed.

1. Oil and Gas Leases: Royalties: Interest

MMS is required by 30 CFR 218.54(a) and 30 CFR 218.150(c) to assess interest for late payment of royalties from the date the royalties were due until the date such payment is received in the appropriate MMS accounting office.

2. Administrative Procedure: Generally--Appeals: Generally--Rules of Practice:
Generally--Res Judicata--
Oil and Gas Leases: Royalties: Interest

Where a lessee had an opportunity to appeal assessment by MMS of additional royalties but failed to do so, its arguments concerning the validity of the royalties need not be addressed in an appeal from a subsequent MMS decision assessing late payment charges for failure to pay the correct royalty timely.

APPEARANCES: W. N. Shaefer, Vice President, LASMO Oil and Gas, Inc., for appellant; Peter J. Schaumberg, Esq., Geoffrey Heath, Esq., Howard W. Chalker, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

LASMO Oil and Gas, Inc. (LASMO) has appealed from the September 1, 1994, decision by the Acting Deputy Commissioner for Indian Affairs (ADC) denying the appeal of the September 17, 1993, order by the Royalty Management Program (RMP) of the Minerals Management Service (MMS), assessing late-payment charges of \$5,586.71 for the late payment of gas royalties on Indian Lease No. 14-20-0208-4625 (MMS AID No. 615-004625-0).

RMP's September 17, 1993, assessment of late payment charges states that MMS' Indian Audit Team conducted an audit for the period November 1, 1987, through December 31, 1991, of computation and payment of gas royalties on the lease. LASMO is the successor in interest of Ultramar Oil and Gas Ltd. (Ultramar). Ultramar was informed of the results of the audit by letter of September 15, 1992, and, in response, LASMO remitted additional royalty payments of \$11,404.01 on August 30, 1993. Based on that amount, MMS assessed LASMO late payment interest charges of \$5,586.71.

The assessment of interest charges was affirmed by ADC's September 1, 1994, decision, which found that LASMO had not disputed the amount of the late royalty payments, and that MMS was legally obligated to assess late payment charges on all royalty payments not received by the due date.

LASMO explained as follows in its October 18, 1993, appeal letter:

1.) LASMO's predecessor company's [(Ultramar's)] only option available to sell gas from the * * * lease was by a percentage of proceeds contract with the gas plant. Having interests in only two wells in the area precluded any leverage with the gas plant, or any gas pipeline in the area, to enter into wellhead sales contracts.

It is our understanding that the purpose of dual accounting is to determine the highest price available to a producer. In [Ultramar's] case, the highest price available was the one received from the gas plant each month because no other price was available.

2.) LASMO paid an audit assessment of \$11,404.01 for revenue it could not have received, given the circumstances explained above. Accordingly, we do not believe that mythical interest should be assessed on top of mythical revenues.

In its September 29, 1994, request for appeal, filed with the Acting Deputy Commissioner, LASMO set out the following history:

1.) [Ultramar] owned and operated two wells in Oklahoma that produced oil and casinghead gas. It did not own any other Oklahoma properties. The sales contracts for both wells were made at arm's length with unrelated third parties.

2.) [Ultramar] timely paid the correct percentage of oil and casinghead gas royalties due the MMS for the account of five Indian lessees.

3.) On December 19, 1991, [LASMO] acquired [Ultramar] as part of a larger merger.

- 4.) In 1992, MMS audited [Ultramar's] royalties paid to the MMS for the account of the Indian lessees. The audit findings were
 - a.) Oil royalties were overpaid to four lessees and underpaid to one lessee.
 - b.) [Ultramar] failed to perform the dual value calculation for casinghead gas sales.
- 5.) The published MMS audit report addressed only the underpaid lessee. It made no mention that the overpayments exactly equalled the underpayment. The MMS demanded that LASMO pay \$7,081.36 for test months' underpayments and determine the underpayments for the remaining months of the period audited.
- 6.) After making the additional calculations LASMO made out-of-pocket payments to the underpaid lessee of \$7,081.36 for the test months and \$9,778.12 for the remaining months. Later on, LASMO paid \$1,407.51 interest underpayments.
- 7.) LASMO attempted to recover the overpayments but [was] informed by the MMS, after the fact, that overpayments to allotted lessees could be recovered from only 50% of future production. Since both wells are producing much less than during the period audited, we estimate that less than \$500 of the non-existent underpayment will be recovered over the next five years.
- 8.) To recover the \$500 we prepared several MMS forms that were sent to the oil purchaser. Approximately two months later the purchaser notified us that the MMS had levied a \$965.00 fine on the forms because one box of each line had the number 1, when the correct number should have been 0.

The preceding appears to be set out as background. Nothing indicates that LASMO ever appealed any of the MMS decisions referenced above.

LASMO continues, relating the history of the underpayment that led to the assessment of late payment charges in this appeal:

- 9.) In mid-1993, the MMS required that LASMO perform a dual value accounting for the casinghead gas sales. Since [Ultramar] owned only two wells in Oklahoma we had no basis to perform this exercise, and sought guidance from MMS personnel in Oklahoma City and Denver. The gist of their "guidance" was do the best you can and don't worry too much because the MMS is changing the rules for cases like this and the calculation is necessary only to complete the audit file.

10.) The dual calculation, which was performed by a consultant at a cost of \$2,000, resulted in another non-existent underpayment of \$11,404.01. I hesitated to submit it to the MMS because a cursory review of the pricing assumed overpayment. However, our consultant was re-assured by an MMS employee in Denver that the calculation would be filed in the audit file with no further action.

11.) Much to my surprise the MMS billed LASMO \$11,404.01 for the non-existent underpayment [on the casinghead gas]. Unfortunately, due to other more pressing matters LASMO failed to file a written protest within the required time and as a result paid the \$11,404.01.

12.) In September, 1993 the MMS billed LASMO \$5,586.71 for interest on the non-existent underpayment.

Although it admitted that it failed to appeal the assessment of additional royalties on casinghead gas, LASMO argued that the doctrine of equity should override administrative finality. It stated its position as follows:

The reality is that LASMO has paid the lessees \$30,636.00 for royalties on non-existent revenues and at best may recover \$500 over the next five years. LASMO realizes that the agencies must establish and enforce rules for assessing interest on underpayments, but at the same time also believes that they should not be blindly administered. LASMO further believes that the purpose of the appeals process is to consider the facts in each case and act accordingly.

LASMO requests that the interest assessment be removed.

MMS notes in its answer that it was required, by statute and regulation, to assess late payment charges because royalties due and owing were not timely paid. MMS notes that the present situation does not fall within any recognized exception to that requirement.

[1] Under section 111 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. § 1721 (1994), Congress authorized the imposition of late payment charges to ensure that the Government would not lose the time value of money due and owing to it in situations where royalties were initially underpaid and then later corrected. Late payment charges compensate the Government for the time value of money owing to it but not timely paid. Section 111(a) of FOGRMA, 30 U.S.C. § 1721(a) (1994), provides that, "[i]n the case of oil and gas leases where royalty payments are not received by the Secretary on the date such payments are due, or are less than the amount due, the Secretary shall charge interest on such late

payments or underpayments * * * ." The implementing regulation, 30 CFR 218.54, states that "[a]n interest charge shall be assessed on unpaid and underpaid amounts from the date the amounts are due." See also 30 CFR 218.150; Marathon Oil Co., 128 IBLA 168 (1994); Oxy USA, Inc., 125 IBLA 308, 310-11 (1993); Forest Oil Corp., 111 IBLA 284 (1989). Under these authorities, the Government must assess late payment charges where nonpayment or underpayment of royalties is established.

[2] The issue of the propriety of the amount of the additional royalty due is not before us. LASMO did not appeal MMS' decision of September 15, 1992, assessing additional royalty, which accordingly became final and not subject to challenge in the context of the present appeal from the assessment of late payment charges. As appellant had an opportunity to appeal the assessment of the underlying royalties but failed to do so, we need not consider its arguments concerning their validity. Santa Fe Energy Co., 110 IBLA 209, 210 (1989). The underpayment of royalties having been finally established, owing to the failure to timely appeal the charge MMS was, as noted above, required to charge late payment charges.

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 affirmed.

David L. Hughes
Administrative Judge

I concur.

James L. Burski
Administrative Judge