

INTERIOR BOARD OF LAND APPEALS

Texaco Exploration & Production, Inc.

140 IBLA 282 (October 2, 1997)

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TEXACO EXPLORATION & PRODUCTION INC.

IBLA 95-189

Decided October 2, 1997

Appeal from a Decision of the Acting Deputy Commissioner for Indian Affairs, affirming a Minerals Management Service order to recalculate oil and gas volumes produced and pay additional royalties. MMS-91-0021-IND.

Affirmed.

1. Administrative Authority: Generally--Appeals: Jurisdiction--Board of Land Appeals--Judicial Review--Oil and Gas Leases: Royalties: Generally

A statute establishing time limitations for commencement of judicial actions for damages on behalf of the United States does not limit administrative proceedings within the Department of the Interior.

2. Federal Oil and Gas Royalty Management Act of 1982: Royalties--Indians: Mineral Resources: Oil and Gas: Royalties--Oil and Gas Leases: Royalties: Generally

The MMS properly required a Federal and Indian oil and gas lessee to review oil and gas accounts in order to determine whether royalty underpayment had occurred as a result of understatement of oil and gas volumes produced.

3. Federal Oil and Gas Royalty Management Act of 1982: Royalties--Indians: Mineral Resources: Oil and Gas: Royalties--Oil and Gas Leases: Royalties: Generally

The Federal and Indian lessee was properly required to recalculate and pay additional royalties if warranted where there was evidence of systematic understatement of oil and gas volumes produced from which royalties were calculated.

APPEARANCES: Jimmy E. Shamas, Jr., Esq., Denver, Colorado, for Appellant; Peter J. Schaumberg, Esq., Howard W. Chalker, Esq., Geoffrey Heath, Esq., Sarah L. Inderbitzen, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Department.

OPINION BY ADMINISTRATIVE JUDGE TERRY

Texaco Exploration and Production, Inc. (Texaco), has appealed from a September 16, 1994, Decision of the Acting Deputy Commissioner for Indian Affairs (Acting Deputy's Decision) denying Texaco's appeal of a September 27, 1990, Order by the Royalty Management Program (RMP) of the Minerals Management Service (MMS) to recalculate and pay additional royalties resulting from volume understatements under Jicarilla Tribal Lease Contract 68 for the period October 1980 through September 27, 1990.

The RMP conducted an audit of Appellant's Jicarilla Tribal Lease Contract 68, AID 609-000068-0, for the period October 1, 1980, through September 30, 1983. The audit revealed that in sample months October 1981, and June and November 1982, Texaco understated produced gas volumes on this lease by a total of 985 Mcf and oil volumes by 689.50 barrels. On September 30, 1989, RMP advised Texaco of its audit findings and the company was afforded an opportunity to refute these findings. Texaco did not respond. On September 27, 1990, RMP ordered Texaco by letter to recalculate and pay additional royalties resulting from volume understatements under the lease for the period October 1980 to September 27, 1990, the date of the Order.

Texaco appealed RMP's September 27, 1990, Order to the Deputy Commissioner of Indian Affairs on December 19, 1990. On September 16, 1994, the Acting Deputy Commissioner for Indian Affairs upheld the September 27, 1990, RMP Order and denied the appeal. The Acting Deputy Commissioner held, in pertinent part:

In accordance with established precedents, RMP placed the burden of taking corrective action on the Appellant only after an audit revealed a systemic pattern of noncompliance. Phillips Petroleum Company v. Lujan, 963 F.2d 1380, 1386 (10th Cir. 1992). See also Amoco Production Co., 123 IBLA 278, 291-292 (1992) (concurring opinion).

The Secretary is empowered to require any person, by special or general order, to provide answers to questions pertinent to an audit (30 U.S.C. 1717(a)(1) (1988)). The RMP's requirement that the Appellant furnish data concerning royalty deficiencies resulting from a pattern of volume understatements is properly considered to be such a special order (Amoco Production Co., 123 IBLA at 293).

Moreover, the Appellant states that MMS is barred from demanding recalculation and payment of additional royalties for months which the Appellant states fall outside the 6-year plus 90-day statute of limitations set forth in 28 U.S.C. 2415(a) (1988). * * *

* * * * *

Since this is an administrative appeal rather than a court action, the statutory bar is inapplicable to this proceeding. Benson-Montin-Greer Drilling Corp., 123 IBLA 341, 352 (1992).

For the foregoing reasons, the appeal is denied and the September 27, 1990, order is upheld.

(Acting Deputy's Decision, at 3-4.)

In its Statement of Reasons (SOR) on appeal, Texaco argues that the Government's claim for additional royalties is barred by 28 U.S.C. § 2415 (1994). Texaco contends that the 6-year limitation found in that section applies to claims raised by the Government in administrative as well as judicial proceedings. It asserts that the language, overall structure, and legislative history of section 2415, well established Departmental practices, the record keeping and penalty provisions of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. §§ 1713(b), 1755 (1994), and the judicial construction of section 2415 in Phillips Petroleum Co. v. Lujan, No. 88-C-1487-E (N.D. Okla. Oct 18, 1989), rev'd, 951 F.2d 257, 260 (10th Cir. 1991), all support the conclusion that the limitation bars administrative claims. Texaco insists that the limitation period applies to proceedings to determine liability as well as actions to enforce remedies arising from such liability.

In its answer, MMS challenges Texaco's contention that the 6-year statute of limitations in 28 U.S.C. § 2415 (1994) precludes this administrative proceeding. The MMS argues that this Board's decisions in BHP Petroleum (Americas) Inc., 124 IBLA 185 (1992), Anadarko Petroleum Corp., 122 IBLA 141 (1992), and Footo Mineral Co., 34 IBLA 285, 306, 85 Interior Dec. 171, 182 (1978), clearly establish that the statute of limitations does not bar the Board from upholding the Acting Deputy Commissioner's Decision.

[1] As an initial matter, we reject Texaco's contention that these proceedings are barred by the 6-year statute of limitations at 28 U.S.C. § 2415 (1994). That section, which governs the time for commencing judicial actions brought by the United States, provides in part:

Subject to the provisions of section 2416 of this title, and except as otherwise provided by Congress, every action for money damages brought by the United States or an officer or agency thereof which is founded upon any contract express or implied in law or fact, shall be barred unless the complaint is filed within six years after the right of action accrues or within one year after final decisions have been rendered in applicable administrative proceedings required by contract or by law, whichever is later * * *.

28 U.S.C. § 2415(a) (1994).

This Board has held in numerous decisions that statutes of limitation apply to judicial enforcement of administrative actions, but not to the underlying administrative actions. See Anadarko Petroleum Corp., supra, at 147; Marathon Oil Co., 119 IBLA 345, 352 (1991); Mobil Exploration &

Producing U.S., Inc., 119 IBLA 76, 81, 98 Interior Dec. 207, 210 (1991); Alaska Statebank, 111 IBLA 300, 311 (1989); Forest Oil Corp., 111 IBLA 284 (1989); Footo Mineral Co., *supra*, at 306-08, 85 Interior Dec. at 182-83. We stated in Alaska Statebank, *supra*, that a Departmental proceeding requiring payments which accrued more than 6 years before the proceeding began "is not an action for money damages brought by the United States, but rather is an administrative action not subject to the statute of limitations." *Id.* at 311; *see* Texaco, Inc., 138 IBLA 202, 204 (1997); Phillips Petroleum Co. v. Johnson, 22 F.3d 616 (5th Cir. 1994).

While MMS may be prevented by 28 U.S.C. § 2415(a) (1994) from obtaining judicial relief on a claim for royalties where the obligation to pay arose more than 6 years prior to the filing of the claim with a court, an administrative claim for royalties is not precluded by that statute even where more than 6 years have elapsed since the obligation to pay the royalty arose. Amoco Production Co., 123 IBLA 278, 281 (1992); Mobil Exploration & Producing U.S., Inc., *supra*, at 81, 98 Interior Dec. at 210. We find therefore that 28 U.S.C. § 2415(a) (1994) did not bar MMS in this case from requiring Texaco to pay additional royalties that became due more than 6 years before payment was claimed.

Texaco's second argument asserts that MMS improperly required Appellant to conduct a restructured accounting. Texaco argues that MMS cannot require Texaco to perform what it characterizes as a "self audit" because the law does not authorize lessees to audit themselves. (SOR at 15-16.) Texaco further argues that MMS has failed to demonstrate a "pattern" of error in royalty calculation and payment, and is therefore not entitled under FOGRMA, 30 U.S.C. § 1713(b) (1994), to require Appellant to conduct a restructured accounting of its records in this matter.

[2, 3] Texaco claims that the law limits a lessee's responsibility to a duty to maintain certain records, which are subject to delivery to MMS on demand. In stating this argument, Texaco characterizes the required report as unauthorized because there was no pattern of understatement of produced oil and gas volumes on the Jicarilla Tribal Lease Contract 68 during the audit period of October 1, 1980, through September 30, 1983, contrary to the MMS finding. Moreover, Appellant claims, an audit of the kind demanded is beyond the authority MMS can exercise on behalf of the Secretary. Appellant states that FOGRMA allows the Secretary to conduct audits and reconciliations only "in conformity with the business practices and record keeping systems which were required of the lessee . . . for the period covered by the audit." 30 U.S.C. § 1711(c)(1)." (SOR at 16-18.)

These arguments lack merit. The authority of the Secretary is broad in discharging his obligation to ensure that lessees comply with their obligation to properly remit revenues to lessors under the terms of leases, regulations and statutes. *See, e.g.*, 30 U.S.C. § 1701(b) (1994); 30 U.S.C. § 1711(a) and (c) (1994); 30 U.S.C. § 189 (1994); and 25 U.S.C. §§ 396, 396a-396g, and 2101-2108 (1994). More importantly, Texaco's claim misunderstands the nature of the report required: the report is to answer the

question whether Texaco understated produced oil and gas volumes in other months similar to the understatements in the three sample months in 1981 and 1982. The investigation to be made is limited to a review of oil and gas volumes produced and the royalty calculations derived therefrom for the period stated, in order to determine whether figures for volumes produced in other months were similarly flawed. If there were no similar errors in other months from October 1980 through September 1990, the report could so state.

Concerning the nature of the error suspected, Texaco claims that since the audit covered samples from 1981 and 1982 only, the MMS has presented no justification for presuming that any error found in these months was systemic and repeated by Texaco over a 10-year period. (SOR at 21.) As related in the Deputy Commissioner's 1994 Decision, however:

The audit disclosed gas volume understatements in 3 separate months. There was also a significant oil volume understatement in one of these sample months. These four errors established a systemic pattern of noncompliance. This pattern justified the issuance of an order by RMP requiring Texaco to recalculate and pay additional royalties to cure this pattern of volume under statements during the period October 1980 to the date of the order.

(Acting Deputy's Decision at 3.) The MMS placed the burden of taking corrective action on Appellant only after an audit revealed a systemic pattern of noncompliance. See Phillips Petroleum Company v. Lujan, 963 F.2d 1380, 1386 (10th Cir. 1992); Amoco Production Co., *supra*, at 291-292 (1992). The Deputy Commissioner, in her September 1994 Decision, affirmed the September 1990 MMS letter that directed Texaco to recalculate the volume of oil and gas produced on the lease during the period in question, and to calculate and pay additional royalties owing on account of any production understatements. This directive is entirely consistent with the "audit and reconciliation" requirements within section 101(c)(1) of FOGRMA.

Section 101(c)(1) of FOGRMA requires the Secretary of the Interior and his delegates to "audit and reconcile, to the extent practicable, all current and past lease accounts for leases of oil or gas." *Id.* The September 1990 Order issued by MMS and affirmed by the Acting Deputy Commissioner will require expenditure of some effort by Texaco employees. Texaco must first review its production records and then determine whether its royalty payments reflect an accurate assessment based on that production. There is nothing, however, in section 101(c)(1) to preclude such an order. Congress, in enacting FOGRMA, sought to incorporate a verification system since the previous honor concept had led to under-reporting of production and sales. See H.R. Rep. No. 859, 97th Cong., 2d. Sess. 15, 16 (1982), reprinted in 1982 U.S.C.C.A.N. 4268-4270. Moreover, the statute does not restrain the Secretary from directing a royalty payor to review royalty accounts in order to uncover underpayments traceable to an identified defect in the payor's original calculation of royalties due. See BHP Petroleum (Americas) Inc., *supra*, at 187 (1992).

In two similar cases involving Texaco (Texaco, Inc., 138 IBLA 26 (1997); Texaco, Inc., 138 IBLA 202 (1997)), we previously addressed the issues presented in Texaco's appeal. In Texaco, Inc., 138 IBLA 26, we approved a review and recalculation ordered by MMS for the period 1981 through 1990, the date of the letter order from MMS. In that case, the audit period extended from 1981 through 1986, and sampling had revealed understatements in the volume of natural gas produced between September 1984 and December 1986. Id. We find the language in that case equally applicable here:

We further find that FOGRMA does not limit MMS' authority to require Texaco to submit workpapers and schedules demonstrating compliance with the recalculation order. That statute provides that MMS may, in conducting "any investigation * * * require by special * * * order, any person to submit in writing such * * * answers to questions as [MMS] may reasonably prescribe." 30 U.S.C. § 1717(a)(1) (1994). As we noted in Amoco Production Co., 123 IBLA at 285, the purpose of FOGRMA was to enhance and expand the investigatory powers of the Secretary and MMS. We conclude that MMS is authorized to require the preparation and submission of the requested documents under 30 U.S.C. § 1717(a)(1) (1994). See Phillips Petroleum Co. V. Lujan, 951 F.2d 257, 260 (10th Cir. 1991); BHP Petroleum (Americas) Inc., 124 IBLA at 189.

Id. at 29.

The evidence discovered by MMS in its review concerning the under statement of the volume of natural gas and oil produced by Texaco on the Jicarilla Tribal lease in four separate instances in three sample months in 1981 and 1982 disclosed irregularities that were capable of repetition. See Texaco, Inc., 139 IBLA at 29; Texaco Exploration & Production, Inc., 134 IBLA at 270; Amoco Production Co., 123 IBLA at 294. Thus, ample justification exists for the MMS demand.

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.

James P. Terry
Administrative Judge

I concur.

John H. Kelly
Administrative Judge