

INTERIOR BOARD OF LAND APPEALS

W.A. Moncrief, Jr.

144 IBLA 13 (April 28, 1998)

Title page added by:
ibiadecisions.com

Appeal from a Decision of the Associate Director for Policy and Management Improvement, Minerals Management Service, affirming in part an order to calculate and pay additional royalties (MMS-91-0011-O&G) and affirming an assessment of late penalty charges (MMS-93-0473-O&G).

Affirmed.

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

The 6-year statute of limitations at 28 U.S.C. § 2415(a) (1994) for commencement by the United States of civil actions for damages does not apply to limit administrative action by the Department. An MMS order to recalculate and pay additional royalty and an assessment of late payment charges are administrative actions not subject to the statute of limitations.

APPEARANCES: William Pannill, Esq., Roy L. Barnes, Esq., Houston, Texas, for Appellant; Peter J. Schaumberg, Esq., Howard W. Chalker, Esq., Geoffrey Heath, Esq., for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE PRICE

W.A. Moncrief, Jr. (Moncrief) has appealed the May 30, 1996, Decision of the Associate Director for Policy and Management Improvement, Minerals Management Service (MMS), upholding in part a December 4, 1990, Order (MMS-91-0011-O&G) of the Royalty Compliance Division (RCD) directing Moncrief to calculate and pay additional royalties, and upholding in its entirety a June 8, 1993, assessment of late payment charges (MMS-93-0473-O&G) by the Dallas Area Audit Office.

By letter dated December 4, 1990, RCD, informed Moncrief that a review of Moncrief's practices and procedures relating to the computation and payment of royalties due on minerals removed from Federal and Indian leases for the period April 1, 1983, through December 31, 1988, disclosed that Moncrief had failed to include all tax reimbursements received for gas produced and sold from Federal leases in its royalty calculations. The RCD

stated that its audit of royalties associated with Federal leases participating in the Long Butte Unit disclosed that Moncrief received ad valorem tax reimbursements associated with gas production allocated to Federal leases from the gas purchaser but paid no royalties on these reimbursements. Therefore, RCD concluded Moncrief had paid royalties on less than the "gross proceeds" and thus had underpaid royalties.

The RCD determined that this failure to pay royalties was not limited to the Long Butte Unit, but was systemic, and alluded to a statement by Moncrief that it did not pay Federal royalties on tax reimbursements associated with the working interest share of Federal lease production. (Dec. 4, 1990, letter at 2-3.) Thus, RCD directed Moncrief to review royalty payments for all of its Federal and Indian leases, as well as those for which Moncrief had payor responsibility, for the period April 1, 1983, through December 31, 1988, to determine whether tax reimbursements were included in the valuation of the gas for royalty purposes. Moncrief was also ordered to calculate and pay any additional royalties due on taxes recovered or taxes Moncrief was entitled to recover under the terms of his sales contracts.

In response to the RCD Order, Moncrief calculated and paid \$539,775.17 in additional royalties under protest. Moncrief also appealed the December 4, 1990, Order to the Director, MMS, pursuant to 30 C.F.R. § 290 (1990). On June 8, 1993, while that appeal was pending, MMS directed Moncrief to pay \$442,331.04 in late payment charges for the \$539,775.17 royalty payments. The late payment assessment covered the period from April 1, 1983, through April 20, 1993. Moncrief also appealed the assessment of late payment charges to the Director. The two appeals were consolidated in the Associate Director's Decision of May 30, 1996.

The Associate Director's Decision upheld the two Orders, except to the extent the December 4, 1990, Order required Moncrief to add the tax reimbursements received by Moncrief's co-lessees to gross value for royalty purposes. The Associate Director held that requirement to be inconsistent with this Board's decision in Mesa Operating Limited Partnership (On Reconsideration), 128 IBLA 174 (1994), wherein it was held that a person who had no interest in a lease could not be held responsible for a lessee's obligation to pay in the absence of a regulation and an explicit statement in the Payor Information Form (PIF) that filing a PIF constituted the assumption of the lessee's obligation to pay royalty by the person filing the form.

The Associate Director rejected Moncrief's contention that the statute of limitations, 28 U.S.C. § 2415(a) (1994), barred MMS from seeking additional royalties in connection with transactions that took place more than 6 years prior to the December 4, 1990, Order. She also rejected Moncrief's argument that an ad valorem tax was a property tax and not a tax on production, and as a consequence, should be excluded from royalty calculations. The Associate Director further determined that tax reimbursements were part of a lessee's gross proceeds and that Moncrief therefore was liable for royalties on the reimbursements. In response to Moncrief's argument that MMS lacked authority to compel him to conduct a "self-audit," the Associate Director explained that Moncrief had not been ordered to perform an audit.

because MMS had already performed the audit. Having found patterns of noncompliance, MMS had merely ordered Moncrief to take corrective action by performing a revised or restructured accounting to remedy the irregularities found. She observed that restructured accounting was upheld in an unpublished decision by the U.S. Court of Appeals for the Fifth Circuit in Phillips Petroleum Co. v. Johnson, 1994 WL 484506 (Sept. 7, 1994). Finally, the Associate Director upheld the late payment assessment because the royalty payments, as correctly calculated, in fact were late.

In his Notice of Appeal, Moncrief renews his arguments that the MMS order to pay royalties due before December 4, 1984, and the resulting late-payment penalties is barred by 28 U.S.C. § 2415(a) (1994), which establishes a 6-year statute of limitations. Moncrief contends that his oil and gas lease contracts in Wyoming are governed by decisions of the Tenth Circuit Court of Appeals and in Phillips Petroleum Co. v. Lujan, 4 F.3d 858 (1993), in which that court held that section 2415 bars Government claims for unpaid royalties that are more than 6 years delinquent, unless the Government establishes that it could not reasonably have known of its claim more than 6 years before asserting it. He contends that MMS knew about his accounting practice with respect to the ad valorem taxes for many years, and has made no effort to make the required showing that it did not know or could not reasonably have known the facts giving rise to its claim against him. No such showing is required in an administrative context, however, as more fully discussed below.

[1] The statute of limitations cited by Moncrief, 28 U.S.C. § 2415(a) (1994), provides that "every action for money damages brought by the United States * * * 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." We have long ruled that statutes establishing time limitations for the commencement of judicial actions for damages on behalf of the United States do not limit administrative proceedings within the Department of the Interior. Texaco Exploration & Production, Inc., 134 IBLA 267, 270 (1995); Chevron U.S.A., Inc., 129 IBLA 151, 154 (1994), and cases cited therein. Moreover, we have specifically declined to rule that MMS demands for additional royalty are barred by that provision. Marathon Oil Co., 128 IBLA 168, 170-71 (1994); Anadarko Petroleum Corp., 122 IBLA 141, 147-48 (1992). As we stated in Alaska Statebank, 111 IBLA 300, 311 (1989), a Departmental proceeding requiring payments that accrued more than 6 years before the proceeding was initiated "is not an action for money damages brought by the United States, but rather is administrative action not subject to the statute of limitations." Accordingly, we find that 28 U.S.C. § 2415(a) (1994) did not bar MMS from requiring Moncrief to pay the additional royalties.

Similarly, 28 U.S.C. § 2415(a) (1994) does not prevent MMS from demanding that Moncrief pay the interest assessed for late payment of royalties, because a demand for payment of interest is also an administrative action not subject to the statute of limitations. See S.E.R. Jobs for Progress, Inc. v. United States, 759 F.2d 1, 5 (Fed. Cir. 1985); Alaska Statebank, supra, at 311-12. The authority to demand additional royalties and related interest in an administrative proceeding is to be distinguished

from the question of whether the statute of limitations would bar a suit before a court of competent jurisdiction to collect outstanding royalty. Such determination, like the evidence of what the Department knew or should have known about a royalty claim, is properly made by the court before which any collection proceeding is brought. Oryx Energy Co., 137 IBLA 177, 183 (1996).

Phillips Petroleum Co. v. Lujan, *supra*, cited by Moncrief, is not to the contrary. The court there took notice that "[t]he parties agree that 28 U.S.C. § 2415(a) is the applicable statute for determining when the government must commence its action to collect the royalty underpayment." 4 F.3d at 860.

Accordingly, 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.

T. Britt Price
Administrative Judge

I concur.

John H. Kelly
Administrative Judge