

INTERIOR BOARD OF LAND APPEALS

GPM Gas Corp.

147 IBLA 314 (February 18, 1999)

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GPM GAS CORP.

IBLA 97-417

Decided February 18, 1999

Appeal from a Decision of the Deputy Commissioner of Indian Affairs affirming Minerals Management Service order to pay royalty. MMS-94-0095-IND.

Affirmed.

1. Federal Oil and Gas Royalty Management Act of 1982: Generally--Federal Oil and Gas Royalty Management Act of 1982: Royalties--Indians: Leases and Permits: Assignments--Indians: Mineral Resources: Oil and Gas: Allotted Lands--Oil and Gas Leases: Assignments and Transfers--Oil and Gas Leases: Royalties: Payments--Rules of Practice: Evidence

Where a casinghead gas sales contract authorized a purchaser to pay royalty on the seller's behalf and a division order expressly directed it to disburse the royalty interest to BIA, the responsibility to pay royalty has been assigned to the purchaser, and it and its successors in interest are responsible for paying additional royalty found to be due.

APPEARANCES: M. Julia Hook, Esq., Marily Nixon, Esq., Denver, Colorado, for Appellant; Howard W. Chalker, Esq., Peter J. Schaumberg, Esq., Office of the Solicitor, U.S. Department of the Interior, for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

GPM Gas Corporation (GPM or Appellant) has appealed from the February 5, 1997, Decision of the Deputy Commissioner of Indian Affairs, Bureau of Indian Affairs (BIA), affirming the January 12, 1994, Order of the Minerals Management Service (MMS) requiring GPM to pay \$1,006.06 in royalty on gas produced from Indian Lease No. 610-000267-0.

GPM is the successor in interest to Phillips Petroleum Company (Phillips), which purchased casinghead gas from the lease. It is undisputed that at no time was either Phillips or GPM a lessee or interest

holder in the lease; that at no time was either Phillips or GPM assigned any interest in the lease; and that at no time was either Phillips or GPM the operator of the lease. (Statement of Reasons (SOR) at 2.) Further, neither Phillips nor GPM has been the purchaser of gas from the lease, or involved in any other way with the lease or casinghead gas purchase contracts since 1985. Id.

MMS' order required GPM to pay \$1,006.06 in additional royalties due on the lease for the period October 1, 1980, through September 30, 1982, ruling that GPM had failed to pay royalties based on "the majority price." GPM does not dispute the amount of the additional royalties, but argues that it is not liable for royalty because it was never a lessee and was never assigned the royalty payment responsibility. (SOR at 3-7.)

GPM concedes that Phillips "originally remitted the royalty on behalf of and at the instruction of Donald Slawson," the lease operator. The case record includes the "Casinghead Gas Contract" (Contract) under which Phillips was authorized "to disburse such royalties, overriding royalties, bonus payments and production payments as Seller shall from time to time direct, accruing from the production and sale of gas hereunder." (Contract at 12.) The record also contains a document entitled "Directions to Phillips Petroleum Company for Disbursement of Payments under Gas Contract," which expressly cites the Contract and directs Phillips to disburse royalty to BIA: "Pursuant to the provisions of Paragraph 12, Royalty, of said gas contract, [Phillips] is hereby directed, until further notice, to disburse the payments due under said Gas Contract to the payees shown below in accordance with the designated fractional interest of each payee." The payees list includes ".1666667 RI" to BIA, an obvious reference to the Indian lessor's 16 2/3 percent royalty interest. (MMS Field Report, Attachment 15.) These documents leave no doubt that Phillips accepted the royalty payment responsibility here.

[1] It is established that a payor who has been assigned and accepted the royalty payment responsibility on a lease is responsible for any additional royalties. Mesa Operating Limited Partnership (On Reconsideration), 128 IBLA 174 (1994). Further, division orders such as that quoted above constitute controlling evidence that the obligation to pay royalty has been assigned. Id. at 182-83. 1/ Phillips having agreed to pay royalty, GPM, as its successor in interest, is responsible for payment of additional royalty.

1/ We also found that a division order constituted convincing evidence that the obligation to pay royalty was assigned in the unpublished Order in Phillips Petroleum Co. (On Reconsideration), IBLA 90-242 (Feb. 3, 1994), where we held: "In this case the division orders, on Phillips letterhead, provide that 'until further notice Phillips shall give credit * * * as per directions below' and credit the royalty interest to the Bureau of Indian Affairs." The present case is similar.

We agree with MMS that its assessment is not barred by laches, estoppel, or statute of limitations. The record shows that MMS notified Phillips of an impending audit, and Phillips challenged the matter in court. MMS began its audit in a reasonable time and did not fail to act or delay in the performance of its duties. In any event, the authority of the United States to collect royalty that is due is not vitiated or lost by acquiescence of its officers or their laches, neglect of duty, failure to act, or delays in the performance of their duties. See 43 C.F.R. § 1810.3(a); Michael D. Dahmer, 132 IBLA 17, 24 (1995); Ametex Corp., 121 IBLA 291, 294 (1991). We have also frequently held that statutes of limitation do not apply to administrative appeals. See, e.g., Anadarko Petroleum Corp., 122 IBLA 141 (1992).

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.

David L. Hughes
Administrative Judge

I concur:

James P. Terry
Administrative Judge