

INTERIOR BOARD OF LAND APPEALS

FMC Wyoming Corp.

154 IBLA 128 (January 31, 2001)

Title page added by:
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FMC WYOMING CORP.

IBLA 96-170

Decided January 31, 2001

Appeal from a decision of the Associate Director for Policy and Management Improvement, Minerals Management Service, affirming a valuation determination issued by the Valuation and Standards Division with respect to sodium bicarbonate produced from Federal sodium leases situated in the Green River Basin, Wyoming. MMS-94-0217-MIN.

Affirmed in part as modified, reversed in part.

1. Mineral Leasing Act: Royalties--Sodium Leases and Permits: Royalties

The royalty rate for products mined and disposed of under sodium leases must be imposed on the "gross value of the sodium compounds and other related products at the point of shipment to market," which means the gross value of a "secondary product" for sale in an established market is based, where the primary product from which it is derived is not sold, on the contract unit price of the secondary product less deductions allowed for the purchase price of reagents which are chemically combined with the primary product.

2. Administrative Authority: Estoppel--Estoppel

While a lessee may have relied on a crucial misstatement in a long-standing decision, estoppel is an extraordinary remedy, especially as it relates to the public lands, and cannot be used to defeat the Department's purpose of protecting public interests. Estoppel does not lie where the effect of such action would be to grant a right not authorized by law, such as a royalty valuation less than the gross value of lease production at the point of shipment to market. MMS is not bound by prior misinterpretation of a rule or regulation, even though the error has been followed for a long time.

APPEARANCES: Lawrence J. Wolfe, Esq., and Lynnette J. Boomgaarden, Esq., Cheyenne, Wyoming, for FMC Corporation; Howard W. Chalker, Esq., and Peter J. Schaumberg, Esq., Office of the Solicitor, Washington, D.C., for Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE TERRY

FMC Wyoming Corporation (FMC or appellant) appeals from a September 25, 1995, decision (Decision) of the Associate Director for Policy and Management Improvement, Minerals Management Service (MMS), affirming a 1994 valuation determination issued by MMS' Valuation and Standards Division (VSD Decision) with respect to sodium bicarbonate produced from Federal sodium leases situated in the Green River Basin, Wyoming.

The record reflects that FMC has been mining trona (sodium) ore from the leases since the 1970's. Presently, the mined ore is processed at FMC's nearby Green River Plant into a purified sesquicarbonate solution and thereafter soda ash or sodium bicarbonate is produced, depending on the process employed. ^{1/} As sodium bicarbonate is worth considerably more commercially than soda ash or sesquicarbonate, the royalty value of the produced sodium bicarbonate has long been a concern of both FMC and the Department.

By decision in FMC Corporation, GS-12-Mining (Jan. 3, 1979)(1979 Decision), the Acting Director, U.S. Geological Survey (USGS, predecessor to MMS in royalty matters) ruled that for royalty purposes, soda ash produced from the subject leases "is a primary refined product and not a chemical combination of a leasehold mineral with a purchased reagent" (1979 Decision at 5), and that sodium bicarbonate produced by the lessee is a secondary product for which the royalty value is to be based on the amount of soda ash consumed in producing the sodium bicarbonate. (1979 Decision at 7.) The Acting Director based his conclusions on 1977 guidelines formulated by USGS for determining royalty value on production from Federal potassium and sodium leases. ^{2/} Primary products were construed therein as generally the first marketable products recovered through the processing of raw ore. Secondary products were likewise defined as "those

^{1/} Raw trona is approximately 90 percent sodium sesquicarbonate. FMC mines trona from private and state lands as well as from the subject leases. See Statement of Reasons (SOR) at 5.

^{2/} Formally entitled "Guidelines for Determining the Value to be Used to Compute the Royalty Due of Production from Federal Potassium and Sodium Leases," this memorandum, dated Jan. 19, 1977, was approved by the Assistant Secretary, Energy and Minerals. The Guidelines instruct that the percentage royalty prescribed by the lease is to be applied to the sales price of bulk products received in arm's-length contracts at the customary point of shipment to market.

products resulting from the application of extensive chemical processing, usually involving the use of purchased reagents that become chemically combined with the primary products." (1977 USGS Guidelines at 2.)

In a March 21, 1994, letter, VSD advised FMC that it had reviewed the matter and announced that USGS' determination to value sodium bicarbonate as a secondary product would no longer be controlling. The VSD deemed the sodium bicarbonate produced to be a primary product and directed FMC to pay royalty in accordance with its ruling beginning with March 1994. In an accompanying document providing details supporting its determination, VSD stated:

1. Sodium bicarbonate is a refined product, but it is a primary product because it occurs in the ore. The chemical constituents of sodium bicarbonate are found in the ore.
2. Primary products are generally considered to be the first marketable products recovered through the processing of raw ore or brine. FMC produces sodium bicarbonate from dissolved and purified trona ore termed sodium sesquicarbonate liquor. Depending on the process, FMC can produce sodium bicarbonate, soda ash, or sodium sesquicarbonate as the first product from a production stream of sodium sesquicarbonate liquor.
3. Sodium sesquicarbonate liquor may be used to make soda ash or sodium bicarbonate. However, the process necessary to make sodium bicarbonate is no more an extensive processing operation than is the processing necessary to make soda ash. Since soda ash is a primary product, so, too, is sodium bicarbonate. The net difference in chemistry between the processing of sodium sesquicarbonate into soda ash or sodium bicarbonate is that for soda ash, carbon dioxide is removed from sodium sesquicarbonate whereas for sodium bicarbonate carbon dioxide is added.

(VSD Decision, Enclosure 1 at 1.) The VSD compared FMC's operation with those processing sodium bicarbonate from brine produced from Federal leases at Searles Lake, California, and those processing potassium sulfate from ore mined from Federal leases at Carlsbad, New Mexico. Noting that those products had always been considered under the 1977 Guidelines as primary products for royalty valuation, VSD opined that the processes are too similar to warrant different valuation methods.

FMC appealed the VSD determination to the Director's Office, MMS. The Associate Director for Policy and Management Improvement stated as follows:

The Mineral Leasing Act (MLA), 30 U.S.C. 181-287 (1988) provides in relevant part at section [32] thereof that:

The Secretary of the Interior is authorized to prescribe necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purposes of the Act * * *.

Pursuant to the MLA, the appellant has been issued 7 Federal sodium leases in the Green River Area of Wyoming. The record indicates that among these, two forms of lease contracts are in effect. One example, Lease No. M75-317634 in Part II at section 2 and Attachment A thereto prescribes a percentage royalty on the "gross value of the output of the leased deposits at the point of shipment to market." Part I at section 1 thereof states that the lease is made subject to the MLA and "to the regulations and general mining orders of the Secretary of the Interior in force on the date this lease issued."

The second example, Lease No. M75-044874 provides in section 2(b) that the percentage royalty rate shall be applied to "the quantity or gross value of the output of sodium compounds and other related products at the point of shipment to market." The lease is also made subject to all regulations of the Secretary of the Interior and provides in section 2(b) that:

It is expressly understood that the Secretary of the Interior may establish reasonable minimum values for the purpose of computing royalty on any of the leased deposits, due consideration being given to the highest price paid for a part or a majority of the production of like quality products from the same general area, the price received by the lessee, posted prices and other relevant matters.

The regulations set forth at 30 CFR 206.301 (1994) prescribe that:

(a) The gross value for royalty purposes shall be the sale or contract unit price times the number of units sold, Provided, however, That where the authorized officer determines:

(1) That a contract of sale or other business arrangement between the lessee and a purchaser of some or all of the commodities produced from the lease is not a bona fide transaction between independent parties because it is based in whole or in part upon considerations other than the value of the commodities, or (2) That no

bona fide sales price is received for some or all of such commodities because the lessee is consuming them, the authorized officer shall determine their gross value, taking into account: (i) All prices received by the lessee in all bona fide transactions, (ii) Prices paid for commodities of like quality produced from the same general area, and (iii) Such other relevant factors as the authorized officer may deem appropriate * * *.

On the basis of the foregoing, it is firmly established in the record that the VSD determination being appealed is fully within the discretion expressly granted to the Secretary under the MLA and the lease terms as implemented by the 1977 Guidelines in effect when the leases were issued.

(Decision at 6-7.)

The Associate Director then cited to a Board decision to express "that a royalty valuation methodology that is within the discretion of applicable regulatory authority may be revised by MMS prospectively:"

In Sun Exploration and Production Co., 112 IBLA 373 (1990), [the Board] at page 387 stated:

We have no quarrel with the notion that MMS is not forever bound by its prior interpretation of a statute or regulation, even though the interpretation has been applied for a long time. If MMS determines that a different construction should be given, it is within MMS' prerogative to apply the new construction, so long as it is "adequately explicated." See, e.g., NLRB v. Weingarten, Inc., 420 U.S. 251, 265-67 (1975); Brennan v. Gilles & Cotting, Inc., 504 F.2d 1255, 1264-66 (4th Cir. 1974).

(Decision at 7-8.) The Associate Director noted that FMC challenged the VSD determination by introducing

expert, technical opinion contending that the Green River sodium bicarbonate may reasonably be considered a secondary product under the 1977 Guidelines because it involves "an extensive chemical process" and a "purchased reagent" that chemically combines with the trona ore mined from the Federal leases.

(Decision at 8.) In response thereto, the Associate Director observed that VSD "has set forth an extensive and reasoned justification for its conclusion that for these purposes, the sodium bicarbonate process is no more extensive than that used to make soda ash and not materially different from

the process used at Searles Lake." (Decision at 9.) Choosing to rely on VSD's conclusions rather than FMC's, the Associate Director expressed that in matters of arguable differences of opinion it is Departmental policy to defer to its technical experts when they are supported by the record. The Associate Director held that VSD "has provided a sound factual and regulatory basis for its determinations and has demonstrated convincingly that the revised method is necessary to achieve programmatic consistency" (Decision at 9), and that FMC failed to demonstrate that the valuation method selected is in error. The Associate Director further concluded that FMC's argument that the VSD determination is unfair because it rejects a long-standing policy upon which it has come to rely on in its business decisions is without merit considering the broad discretion afforded the Secretary in these matters and the fact that the revised method is to be adopted prospectively only.

In its appeal to this Board, FMC asserts that this matter does not involve an evidentiary dispute, stating that

[s]ince the MMS gave FMC approval to value sodium bicarbonate as a secondary product in 1979, there has been no relevant change in the identity of the parties; no change in applicable law, regulations or guidelines; and no change in FMC's sodium bicarbonate production process. Therefore, the issue on appeal is why the MMS changed its policy and whether the MMS has provided a full, reasonable and adequate explanation for its change in regulatory interpretation.

(SOR at 3.) Moreover, FMC argues it was explicitly given "specific approval" by the Department to value the sodium bicarbonate produced from the Green River plant as a secondary product, an approach which MMS now "radically changes." Id. Appellant asserts that MMS knew FMC relied on the 1979 Decision when investing millions of dollars to build its new facility at Green River and claims that the MMS decision will have a dramatic effect on the economic productivity of the project. FMC further contends that the determination to value sodium bicarbonate as a primary product places FMC at a distinct disadvantage with its competitors who have royalty costs based on treatment of sodium bicarbonate as a secondary product. Appellant avers that the determination here is therefore contrary to sound public policy.

There are two issues before us: Is MMS' new construction of the royalty scheme for these leases proper? If so, is it estopped from applying the new scheme in this situation? With respect to the first question, we find that MMS has improperly applied long-standing royalty rules to these leases.

[1] Section 32 of the MLA, 30 U.S.C. § 189 (1994), provides that the Secretary is to prescribe the necessary rules to carry out the purposes of the MLA. As noted by MMS in its decision, royalty in this situation is to

be determined on the gross value of lease production at the point of shipment to market. See also 30 U.S.C. § 262 (1994). The 1977 Guidelines provide:

Royalty is generally due on the value of primary products resulting from production from the leased lands whether such primary products are sold, transferred, or used in the production of secondary products.

Primary products are generally considered to be the first marketable products recovered through the processing of raw ore or brine. When untreated ore or brine is sold, the royalty will be based on the value of the theoretical primary product equivalent.

In those cases when primary products are used to make other products (i.e., primary products are extracted from leased lands), royalty attaches on the value of the resulting products which are actually sold or transferred from the point of shipment to market.

Secondary products are regarded as those products resulting from the application of extensive chemical processing, usually involving the use of purchased reagents that become chemically combined with the primary products. Therefore, royalty is due on the value of the primary products consumed to produce the secondary product.

In those cases where:

1. only a secondary product is actually produced or
2. the primary product is not marketable as produced and is therefore processed to a secondary product, the royalty will be based on the value of the secondary product less the cost of any purchased reagents that become chemically combined with the primary product.

(1977 Guidelines at 2.) No further explanation of the terms "primary" and "secondary" are provided therein. The 1977 Guidelines also fail to clarify the meaning of "extensive chemical processing."

Following issuance of the 1977 Guidelines, the Board decided Foote Mineral Co., 34 IBLA 285, 85 I.D. 171 (1978), which concerned the royalty value of lithium carbonate. Both appellant and MMS have cited this case

in support of their respective positions. In Foote, supra, the Board distinguished between primary and secondary products for royalty valuation purposes:

The terms of the leases and the statutory provisions require the stated royalty rate to be applied to "the quantity or gross value of the value of the output of sodium [or potassium] compounds and other related products [or associated compounds] at the point of shipment to market." 30 U.S.C. 262, 282 (1970). (Emphasis added.) The Department has long interpreted this provision in general to preclude allowance of deductions for plant operations costs and other costs incurred in developing a salable product, and no deduction has been allowed for transportation costs incurred by the lessee where the product has not reached the point of shipment to market. See, e.g., United States Potash Co., A-17518 (February 28, 1934). The "point of shipment to market" not only states the physical location at which the gross value must be determined; it also indicates the required condition of the product when its gross value is determined. Clearly, a product cannot be ready for shipment to market unless it has been processed to a marketable state. This concept won judicial approval when a court upheld the Secretary's determination that the royalty rate must be imposed on the gross value of a "refined product suitable for an established market." United States v. Southwest Potash Corp., 352 F. 2d 113 (10th Cir. 1965), cert. denied, 383 U.S. 911 (1966). That case involved a direct sale of raw potash ore produced under a Federal potassium lease, and the court upheld the Department's determination that the proper royalty base was the price that would have been received had the ore been processed to a product salable in the normal market rather than the actual price paid for the raw ore. The Department exercised this authority under lease provisions which paralleled a regulation now codified at 30 CFR 231.61.

* * * * *

However, the Department has long recognized a difference between "primary" and "secondary" products for the purpose of determining the proper royalty base. Where the lessee markets a "secondary" product, the royalty is based on the gross value of the primary product used in making the secondary product, not on the gross value of the secondary product which is marketed. See, e.g., letter from Oscar L. Chapman, Assistant Secretary, U.S. Department of the Interior, to John T. Burrows, President, Union Potash and Chemical Co. (November 9, 1940). While a "primary" product is a refined product, it is not a chemical combination of a leasehold mineral with a purchased reagent;

generally, those products which are chemical compounds of purchased reagents with minerals extracted under the lease are called "secondary" products.

34 IBLA at 301-302, 85 I.D. at 179-80. In Footte, supra, lithium carbonate was produced by adding soda ash to a brine which had already been treated with a lime reagent to precipitate out all minerals other than lithium. The soda ash chemically bonded with the lithium, without the need for heat or pressure, to produce lithium carbonate. The Board found the lithium carbonate to be a secondary product because it was a chemical compound formed by reacting soda ash with lithium from the lease. The Board thus denied the deduction of the lime reagent (used to settle out other minerals) because it did not chemically combine with a mineral product of the lease. Id. at 302, 85 I.D. at 180.

MMS does not claim to depart from the 1977 Guidelines in this instance. In defense thereof, it states in its decision:

Unlike the situation in Footte, all of the chemical constituents of the sodium bicarbonate including the CO₂ are found on the leases. All (or mostly all) of the CO₂ that is added to the trona ore to produce the sodium bicarbonate comes from the same Federal leases. The Appellant's suggestion that any use of a purchased reagent requires treatment as a secondary product is simply incorrect. The 1977 Guidelines and the decision in Footte provide that secondary products "generally" and "usually" involve purchased reagents.

(Decision at 9.) Thus MMS argues here that just because a chemical bonding process is involved in producing sodium bicarbonate, that product need not be considered a "secondary product." It takes this position because it finds that most of the CO₂ reagent added to produce the marketed sodium bicarbonate is found on the leases. While 30 C.F.R. § 206.301(a)(2)(iii), without being specific, suggests such factors can be considered when determining the valuation for a refined product such as sodium bicarbonate, we cannot accept MMS' reasoning here that the sodium bicarbonate produced is a primary product. Nor do we accept appellant's argument that the primary product involved in producing sodium bicarbonate is soda ash.

In this case, trona ore, which is sodium sesquicarbonate, is mined from the leases. The ore is processed to a sodium sesquicarbonate solution or liquor. Although appellant asserts in its SOR at 16 that "[s]odium bicarbonate results from the application of extensive chemical processing (see the Morensen Affidavit [SOR, Exh. A]), involving the use of a purchased (and produced) reagent (CO₂) that is chemically combined with a primary product (soda ash)," there is no evidence that sodium bicarbonate is produced from soda ash by FMC. That is the fallacy of the 1979 Decision, which determined that the royalty value was to be based on the amount of soda ash consumed in producing the sodium bicarbonate.

In FMC's processing, the sodium sesquicarbonate liquor may be processed, by removal of carbon dioxide, into soda ash or, by addition of carbon dioxide, into sodium bicarbonate. In this situation, applying the 1977 Guidelines and the appropriate regulations, we conclude that the soda ash produced by FMC is a primary product. Primary products are generally considered to be the first marketable products recovered through the processing of raw ore. A primary product is a refined product, but it is not generally a chemical combination of a leased mineral and a purchased reagent. Soda ash is a refined product, but it is not produced by combining sodium sesquicarbonate with a purchased reagent. It is produced by extracting carbon dioxide from the sodium sesquicarbonate liquor.

However, primary products do not have to be marketable. In this case, we also consider sodium sesquicarbonate liquor to be a primary product. It is a primary product which is not marketable. The 1977 Guidelines provide that secondary products are regarded as those products resulting from the application of extensive chemical processing, usually involving the use of purchased chemical reagents that become chemically combined with the primary products. Appellant has established that conversion of sodium sesquicarbonate liquor to sodium bicarbonate involves an extensive chemical process utilizing a reagent. See SOR, Exh. A. The only hurdle not overcome is that the reagent here may not always be "purchased," but the Guidelines also constrain that qualification with a "usually." While MMS desires to classify the sodium bicarbonate produced and marketed as a primary product, to do so would ignore the basic reasoning of the 1979 Decision and the extensive evidence produced by FMC to the contrary. We find that the analysis and evidence presented by the parties clearly indicates that the sodium bicarbonate produced in FMC's processing scheme is indeed a secondary product. ^{3/} To the extent the decision appealed from upheld VSD's determination that the product on which royalty is based is a primary product, that determination is reversed.

We next examine what impact such change in classification has on VSD's determination, affirmed by MMS, that valuation for royalty purposes is to be based on the sodium bicarbonate's sale or contract price with an allowance for the value of the additional weight attributed to the carbon dioxide reagent. See VSD Decision, Enclosure at 7. ^{4/} A similar issue was resolved in Foote, where we stated:

^{3/} We note that, to the extent MMS relies on the sodium bicarbonate processing operation at Searles Lake, California, as support for its position that the sodium bicarbonate produced in this case is a primary product, that reliance is misplaced. Appellant has established that the production process at Searles Lake is a fundamentally different process from its own. See SOR, Exh. B at 1-2. Appellant also has shown that a direct comparison of its process with the processing of potassium sulfate from ore mined from Federal leases in Carlsbad, New Mexico, is flawed. See SOR at 27.

^{4/} We observe that the MMS decision recognized that in Foote, "[t]he decisions of the Acting Director, USGS, and the IBLA comport with the 1977 Guidelines' discussion of an unmarketable primary product modified by reaction with a reagent and set forth the necessary valuation method" (Decision at 3), but that MMS would not apply the same logic to the instant case.

United States v. Southwest Potash Corp., *supra*, makes clear that even if appellant sold the brine directly, the Department could properly hold the royalty base to be the price that would be received if the brine were processed to a refined product salable in the normal market, rather than the actual price paid for the raw brine.

Id. at 303. This is consistent with the 1977 Guidelines which provide, at 2, that "[i]n those cases where * * * only a secondary product is actually produced," which is the case here, "the royalty will be based on the value of the secondary product less the cost of any purchased reagents * * *." Hence, while we disagree with the reasoning MMS used in reaching its determination, we affirm the designated valuation formula based upon the value of the secondary product to be in agreement with the Department's rules and the particular facts in this case, as modified to allow deduction for the cost of the reagent CO₂ purchased, applicable for secondary products, vice the deduction VSD authorized for the value of the increased weight attributed to the finished product resulting from the CO₂ used, as authorized by VSD for primary products. *See* VSD Decision, Enclosure at 7.

While we fault MMS' reasoning, we similarly fault that of appellant. The valuation methodology urged by appellant which argues that the royalty for any sodium bicarbonate produced on these leases must be based on the value of soda ash sold from the leases is clearly erroneous. Thus, the determination in the 1979 Decision to employ the value of soda ash as the royalty basis for sodium bicarbonate is without foundation. Sodium sesquicarbonate liquor is used, not soda ash. Appellant's position, therefore, does not reflect the proper application of the regulations and guidelines that we have discussed.

[2] In concluding that VSD has properly reversed one aspect of the 1979 Decision by recognizing that sodium bicarbonate is not derived from soda ash in FMC's processing, we note that MMS is not bound by a prior incorrect interpretation of a rule or regulation, even though that interpretation has been applied for a long time. *See Sun Exploration and Production Co.*, *supra*; *see also Ideal Basic Industries v. Morton*, 543 F.2d 1364, 1367 (9th Cir. 1976); *Peabody Coal Co.*, 93 IBLA 317 (1986) (the department is not estopped by the principles of res judicata or finality of administrative action from correcting or reversing erroneous decisions). Thus, while VSD had the authority and duty to change its incorrect view of the relationship between soda ash and sodium bicarbonate derived from appellant's leases, we must consider whether equitable principles or the doctrine of estoppel preclude it from doing so in this case.

In determining whether the facts here warrant the application of estoppel principles, we look to the elements of estoppel set forth in *United States v. Georgia Pacific*, 421 F.2d 92 (9th Cir. 1970), as the initial test in determining estoppel questions presented to the Board. *See, e.g., Carl Dresselhaus*, 128 IBLA 26, 33 (1993); *Leitmotif Mining Co.*, 124 IBLA 344, 346 (1992). Those elements are: (1) the party to be estopped must know the facts; (2) the party must intend that its conduct

will be acted upon or must act so that the party asserting estoppel has a right to believe it is so intended; (3) the party asserting the estoppel must be ignorant of the facts; and (4) the party asserting estoppel must rely upon the former's conduct to its injury. Ptarmigan Co., 91 IBLA 113, 117 (1986), aff'd sub nom., Bolt v. United States, 944 F.2d 603 (9th Cir. 1991).

We have also adopted several qualifications articulated by the courts in determining whether the aggrieved party was ignorant of the facts. First, estoppel is an extraordinary remedy, especially as it relates to the public lands, and cannot be used to defeat the Department's purpose of protecting public interests. See James A. Becker, 138 IBLA 347, 350 (1997); Harold E. Woods, 61 IBLA 359, 361 (1982). The application of estoppel against the Government in matters concerning the public lands must be based on affirmative misconduct, such as misrepresentation or concealment of material facts. See United States v. Ruby, 588 F.2d 697, 703 (9th Cir. 1978); David E. Best, 140 IBLA 234, 236 (1997); D.F. Colson, 63 IBLA 221, 224 (1982); see also Martin Faley, 116 IBLA 398, 402 (1990) (the erroneous advice upon which reliance is predicated must be in the form of a crucial misstatement in an official decision). Finally, while estoppel may lie where reliance on Governmental statements deprived a party of a right which it could have lawfully acquired, estoppel does not lie where the effect of such action would be to grant a party a right not authorized by law. See, e.g., Ptarmigan Co., supra at 117.

As described above, royalty is to be determined on the gross value of lease production at the point of shipment to market. To assess value on the basis of the value of soda ash, which is not involved in the production of sodium bicarbonate, contravenes the statute and cannot be permitted. Thus, MMS may not be estopped from demanding that royalty payments be assessed based on the value of the sodium bicarbonate less the value of the CO₂ used, in accordance with the MLA and the 1977 Guidelines, even if it has accepted improperly low royalty payments in the past from FMC based on the value of soda ash. See Atlantic Richfield Co. v. Hickel, 432 F.2d 587, 591 (10th Cir. 1970), aff'g Sinclair Oil and Gas Co., 75 I.D. 155 (1968).

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 is affirmed as to its ultimate determination that the royalty base should be the value of the sodium bicarbonate, although modified to allow a deduction for the purchased cost of the reagent CO₂, and reversed as to the determination that sodium bicarbonate is a primary product.

James P. Terry
Administrative Judge

I concur:

Bruce R. Harris
Deputy Chief Administrative Judge