IN REPLY REFER TO,
United States Department of the Interior
MINERALS MANAGEMENT SERVICE
ROYALTY MANAGEMENT PROGRAM
PO BOX 25165
DENVER, COLORADO 80225
JUN 18 1992

Dear Payor:


Many lessees had appealed orders to pay FERC 94 payments. The court in Mesa upheld the Department's view that those payments are part of gross proceeds. Any taxable proceeds, therefore, are taxable proceeds, whether or not grants are allowed.

MMS will continue to permit lessees to apply for retroactive transportation or processing allowances. However, a lessee's entitlement to apply for an allowance for such costs depends on whether the Department's view that those payments are part of gross proceeds is upheld by the court.

Some lessees are now raising, for the first time, the argument that certain of the reimbursed amounts were actually not reimbursements for costs of putting the production into marketable condition (which are royalty bearing), but instead, involved costs of transportation or processing. The court in Mesa upheld the Department's view that those payments are part of gross proceeds. Any allowance for which a lessee may apply is administered separately, and in the same manner as any other request for an allowance.

Decision by the Assistant Secretary are final actions of the Department and are judicially reviewable in Federal District Court.

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on these payments, some of which were due more than eight years ago and as lessees had ample opportunity to make these applications (or to inform MMS of their intent to make these applications) during the pendency of the litigation and administrative appeals, MMS will grant leave to file these retroactive allowance requests only if they are received by August 14, 1992, by the Royalty Valuation and Standards Division (RVSD), Denver Federal Center, Building 41, P.O. Box 25165, Denver, CO 80225-0165.

MMS will suspend all cases still pending before the Director until August 14, 1992, to permit lessees to submit their allowance requests. If the case in which a lessee wishes to request an allowance is currently under appeal to the Director and the appellant wishes to believe that the allowance issue is properly before the Board in most cases and thus that it may now be asserted in the pending appeal. Rather, it is subject to independent request to RVSD with the Division of Appeals, 31 Elin Street, Herndon, VA 22070-4817. RVSD will consider the request for allowance with the current appeal, the applicant must first submit a request in addition to the request for allowance to the Director and the applicant wishes to request an allowance in this appeal is currently under appeal to the Director and the applicant wishes to extend these requests to RVSD in accordance with the Board's policy to make these applications (or to inform MMS of their intent to make retroactive allowance requests) only if they are received by August 14, 1992. RVSD will not suspend any order to pay or recalculate and pay.

For those cases that were decided by the Assistant Secretary for Land and Minerals Management as described above, no order to pay or recalculate and pay will be stayed, even if the decision is appealed. MMS will require payment of the full amount ordered to be paid plus applicable late payment charges. The decision of the Secretary’s interpretation of the statute is unreviewable.

MMS will require payment of the full amount ordered to be paid plus applicable late payment charges. If the lease is subject to independent request to RVSD as described above, MMS will determine through the process set forth above, whether and to what extent a retroactive allowance may be granted. In either case, RVSD will determine whether the request for a retroactive allowance is properly before the Board in most cases and thus that it may now be asserted in the pending appeal. Rather, it is subject to independent request to RVSD with the Division of Appeals, 31 Elin Street, Herndon, VA 22070-4817. RVSD will consider the request for allowance with the current appeal, the applicant must first submit a request in addition to the request for allowance to the Director and the applicant wishes to extend these requests to RVSD in accordance with the Board's policy to make these applications (or to inform MMS of their intent to make retroactive allowance requests) only if they are received by August 14, 1992. RVSD will not suspend any order to pay or recalculate and pay.

If you have any questions regarding this policy, please contact me at 303-231-3058.

Sincerely,

[Signature]

Associate Director for Royalty Management