



United States Department of the Interior

MINERALS MANAGEMENT SERVICE

Royalty Management Program

P.O. Box 25165

Denver, Colorado 80225-0165

IN REPLY REFER TO:

FEB 9 1995

Notice of Opportunity to Use Alternative Dispute Resolution

Dear Payor,

As part of the Minerals Management Service's (MMS) alternative dispute resolution program, mandated by the Administrative Dispute Resolution Act of 1990 (5 U.S.C. § 572) (ADR Act) as implemented by the Department of the Interior in a Notice in the Federal Register at 59 F. R. 30368 (June 13, 1994), we are explaining the alternate processes available for resolving certain royalty disputes.

Traditionally, payors' disputes with MMS have been resolved through lengthy proceedings in the administrative appeals process and in the Federal courts. For several years we have engaged in a determined program of resolving on-going disputes through face-to-face settlement negotiations between MMS and many payors. In this letter, we are publicizing that program and also announcing a pilot to test the use of third-party neutrals through mediation, fact-finding, and other alternative dispute resolution (ADR) processes. As additional processes are implemented, we will be sending similar notifications to you.

The ADR processes described in this letter are not designed to replace the presentation of facts or healthy discussions with auditors or other MMS personnel prior to the presentation of an order. We encourage you to resolve all factual issues with the auditor or analyst at the earliest stage possible in order to avoid disputes in the first place.

Conditions for MMS to Consider ADR

The MMS considers using ADR to resolve cases, already in the MMS' or Department's administrative appeals process or in judicial proceedings, involving substantial disputes over--

- the facts of the case, or
- the legal basis cited in support of the MMS demand, or
- the methodology for complying with an order to perform.

We evaluate offers and will proceed with negotiations, or other forms of ADR, only when it is in the best interests of the United States, and to the extent that an Indian tribe or Indian allottee is an affected party, it is in the best interest of the affected tribe or allottee, and there is legitimate has is for compromise. Considerations include:

- the merits of the case
- the time saved by the Government
- the money saved by the Government
- the demonstrable benefit to the affected tribe or allottee, if applicable.

In addition, the ADR Act cautions that agencies should consider not using ADR for six specified reasons. See 5 U.S.C. § 572(b) (attached).

The MMS is Conducting a Pilot to Test Use of Third Party Neutrals

The MMS is engaged in a pilot to test the usefulness of other ADR mechanisms, which use third-party neutrals, as alternatives to the administrative appeals process. This pilot will begin on February 15, 1995, and will continue until the end of the fiscal year on September 30, 1995. After that date we will analyze the efficiency and efficacy of these mechanisms and decide whether to continue the use of third-party neutrals and the conditions for such use.

For the pilot, we will require that all costs of third-party neutrals will be shared equally between you, if you choose to participate, and MMS, regardless of the outcome of the ADR. We are willing to consider, under appropriate circumstances mediation, nonbinding arbitration, fact-finding, and such other ADR techniques as may be suggested by the lessee. Under the ADR Act, MMS may not agree to enter into arbitration that is binding on the United States. The lessee and MMS must also agree on what procedural roles will apply to the ADR process. The MMS will have a limited budget, and the pilot will be of limited duration; therefore, if you wish to take part in the pilot, we advise that you apply early. As the Pilot will require the expenditure of additional funds for the third-party neutral, we expect to only accept offers to engage in these processes for taxes involving a significant amount of royalties in dispute.

How to Apply for Either Settlement Negotiations or the ADR Pilot

By letter, tell us the following:

- The points at issue.
- Your proposed resolution, which may include a monetary offer.
- A Statement of Reasons or your explanation showing why MMS should consider using settlement or the ADR pilot to resolve the issues.
- The MMS docket numbers of the relevant appeal(s) and any associated bill numbers.
- If you wish to participate in the pilot:
 - What type of ADR you wish to engage in;
 - e.g., mediation, non-binding arbitration, fact-finding, etc.
 - Why you want to use third-party neutral ADR mechanisms to resolve your appeal(s).

Mail to:

Chief, Office of Enforcement
 Minerals Management Service
 Royalty Management Program
 P.O. Box 25165 MS 3030
 Denver, CO 80225-0165

You may send this letter at the same time as you file your notice of appeal or at any time thereafter

Tolling Agreement

We will acknowledge your request in writing, and generally will ask you to sign an agreement tolling the statute of limitations during the negotiations. This agreement allows enough time for all parties to fully explore the issues and conduct negotiations in an atmosphere of mutual trust. This agreement does not waive the statute of limitations defenses for periods prior to the date the agreement is signed. A tolling agreement may not be required if MMS is holding sufficient funds for administrative offset to protect the Government's interests.

Settlement discussions normally run concurrently with the formal appeals process. If an appeal is being resolved through the ADR pilot, the appeals process may be suspended.

We share copies of the settlement or ADR pilot proposal with affected parties, who may include:

- Other MMS offices
- States conducting audits under the authority of Sections 202 and 205 of the Federal Oil and Gas Management Act of 1982 (for leases within those states)
- The Department of the Interior's Office of the Solicitor
- The Department of Justice (for litigation issues)
- Indian tribes (for tribal leases)*
- The Bureau of Indian Affairs (for Indian allotted leases)

**You may begin direct settlement discussions with an Indian Tribe but must also notify MMS's Office of Enforcement in writing at the address above.*

We establish a team, which will generally include representatives of affected parties, to conduct settlement discussions or to engage in the other form of ADR to be tested through the pilot. The team's negotiator is authorized to reach only tentative agreement, subject to final approval by the appropriate Federal and tribal officers.

After final agreement, we provide instructions on making payments, filing related reports, and completing any other actions called for by the agreement.

For further information, please write to Kenneth R. Vogel, Chief, Office of Enforcement, at the address above, or call him at (303) 231-3749.

Sincerely,



James W. Shaw
Associate Director for
Royalty Management

Administrative Dispute Resolution Act
5 U.S.C § 572. General authority

(a) An agency may use a dispute resolution proceeding for the resolution of an issue in controversy that relates to an administrative program, if the parties agree to such proceeding.

(b) An agency shall consider not using a dispute resolution proceeding if--

(1) a definitive or authoritative resolution of the matter is required for precedential value, and such a proceeding is not likely to be accepted generally as an authoritative precedent;

(2) the matter involves or may bear upon significant questions of Government policy that require additional procedures before a final resolution may be made, and such a proceeding would not likely serve to develop a recommended policy for the agency;

(3) maintaining established policies is of special importance, so that variations among individual decisions are not increased and such a proceeding would not likely reach consistent results among individual decisions;

(4) the matter significantly affects persons or organizations who are not parties to the proceeding;

(5) a full public record of the proceeding is important, and a dispute resolution proceeding cannot provide such a record; and

(6) the agency must maintain continuing jurisdiction over the matter with authority to alter the disposition of the matter in the light of changed circumstances, and a dispute resolution proceeding would interfere with the agency's fulfilling that requirement.

(c) Alternative means of dispute resolution authorized under this subchapter are voluntary procedures which supplement rather than limit other available agency dispute resolution techniques.