Editor's note: 99 I.D. 274; Reconsideration granted; decision modified in part: See 128 IBLA 174, 101 I.D. 8 (Feb. 3, 1994)

MESA OPERATING LIMITED PARTNERSHIP

IBLA 91-55 Decided december 31, 1992

Appeal from a decision of the Deputy to the Assistant Secretary -- Indian Affairs (Operations) denying an appeal of an assessment for additional royalties from Indian oil and gas lease Nos. 607-032354, 607-033483, and 607-061149. MMS-89-0003-IND.

Reversed and remanded.

1. Federal Oil and Gas Royalty Management Act of 1982: Generally--Federal Oil and Gas Royalty Management Act of 1982: Royalties--Statutory Construction: Legislative History

   In enacting sec. 102(a) of FOGRMA, 30 U.S.C. § 1712(a) (1988), Congress did not expand the Secretary's authority, but allowed him to determine, under existing authority of law, which person is responsible for making royalty payments.

2. Federal Oil and Gas Royalty Management Act of 1982: Generally--Federal Oil and Gas Royalty Management Act of 1982: Royalties--Oil and Gas Leases: Assignments and Transfers--Oil and Gas Leases: Royalties: Payments--Rules of Practice: Evidence

   Sec. 102(a) of FOGRMA, 30 U.S.C. § 1712(a) (1988), requires a lessee to notify the Secretary of the assignment of the obligation to pay royalty. Sec. 3(7) of FOGRMA, 30 U.S.C. § 1702(7) (1988), defines lessee as including any person who has been assigned an obligation to make a royalty or other payment required by a lease.

Under secs. 102(a) and 3(7) of FOGRMA, for a person who holds no interest in a lease to be liable for the lessee's royalty payments, the lessee and the person must have agreed to an assignment of the obligation to pay royalty, and notice of that assignment must have been filed with the Secretary. A PIF filed under FOGRMA is not an assignment or either evidence of or notice of an assignment, and filing a PIF, without more, does not render the person filing it a lessee under sec. 3(7) of FOGRMA, 30 U.S.C. § 1702(7) (1988). There must be a document assigning the obligation to make royalty payments or a contract or agreement stating this obligation.

3. Act of Mar. 3, 1909--Federal Oil and Gas Royalty Management Act of 1982: Generally--Federal Oil and Gas Royalty Management Act: 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

   The assignment of the obligation to make royalty payments is not related to an assignment of a lease or an interest in a lease that must be approved by BIA under 25 CFR 212.22.

4. Federal Oil and Gas Royalty Management Act of 1982: Generally--Federal Oil and Gas Royalty Management Act of 1982: Royalties--Oil and Gas Leases: Assignments and Transfers--Oil and Gas Leases: Royalties: Payments--Rules of Practice: Evidence

   The making of royalty payments and the filing of PIF's are not sufficient evidence to indicate an intent to be bound as an agent by lessees' obligation to pay royalty.

APPEARANCES: Jerry E. Rothrock, Esq., and Susan Brooks, Esq., Washington, D.C., and Robert C. Thomas, Esq., and Edward K. Norfleet, Esq., Amarillo, Texas, for appellant; Peter J. Schaumberg, Esq., Geoffrey Heath, Esq., and Howard W. Chalker, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

I. Introduction

Pioneer Gas Products Company (Pioneer) purchased the gas produced from three oil and gas leases on allotted Indian lands from 1981-1986, processed it, and paid the royalties owed to the Indian lessors. 1/ Mesa Operating Limited Partnership (Mesa) acquired Pioneer in June 1986 and continued to purchase the gas from the leases and pay the royalties. The Minerals Management Service (MMS) reviewed Pioneer's January and April 1986 royalty payments and determined Pioneer had underpaid. 2/ MMS required Mesa to pay the amount of Pioneer's January and April 1986 underpayments and to recalculate the royalties for all other months from March 1981 to November 1988 and report any additional royalty due. Mesa appealed under 30 CFR Part 290. Mesa argued that it was not liable for any underpayment because neither Pioneer nor Mesa owned any interest in the leases. In a September 20,

1990, decision, the Deputy to the Assistant Secretary -- Indian Affairs (Operations) denied Mesa's appeal. Mesa appealed to us under 30 CFR 290.7.

1/ The leases are Indian lease No. 607-032354, located in the SE¼, sec. 3, T. 9 N., R. 11 W.; Indian lease No. 607-033483, located in the NW¼, sec. 11, T. 9 N., R. 11 W.; and Indian lease No. 607-061149, located in the NE¼, sec. 11, T. 9 N., R. 11 W., all west of the Indian Meridian, in Caddo County, Oklahoma.

2/ Letter of Nov. 22, 1988, to Mesa from Royalty Management Program MMS. MMS determined that beginning in January 1986 Pioneer had paid royalties
on the basis of the value of the products made from the gas, rather than
the higher value of the gas at the wellhead, even though the leases provide that royalty would be computed on whichever was the higher value.
See paragraph 3(c) of Lease Nos. 32354, 33483, and 61149; see also 25 CFR 212.16.

Because we find Mesa is not a lessee within the meaning of the Federal Oil and Gas Royalty Management Act (FOGRMA), or liable as an agent of the lessees, we reverse.

II. The Decision Below and the Parties' Arguments

In response to Mesa's arguments on appeal under 30 CFR Part 290, the MMS Area Manager quoted the definition of "lessee" in FOGRMA 3/ and stated that Pioneer had "filed Payor Information Forms (PIF) with MMS obligating Pioneer and subsequently Mesa to remit royalties on behalf of lessees. * * * Pioneer and Mesa have recognized this obligation by making the royalty payments on these Indian leases during the audit period." 4/

3/ "'[L]essee' means any person to whom the United States, an Indian tribe, or an Indian allottee, issues a lease, or any person who has been assigned an obligation to make royalty or other payments required by the lease." 30 U.S.C. § 1702(7) (1988).

4/ Memorandum of Apr. 12, 1989, from Area Manager, Dallas Area Compliance Office, through Chief, Royalty Compliance Division, to Chief, Division of Appeals, concerning Notice of Appeal from [Mesa] (Docket No. MMS-89-0003-IND), at 2. (The Area Manager's memorandum, which constituted the report required by 30 CFR 290.3(b), was sent to Mesa for comment.)

Under 30 CFR 210.51, a PIF (Form MMS-4025) must be submitted to MMS by the party who is making the royalty payment for each lease on which royalties are paid, within 30 days after issuance of a new lease or a modification of an existing lease that changes the paying responsibility on the lease.

On Dec. 5, 1991, MMS submitted copies of the following PIF's:

Lease No. 607-032354: MMS submitted an undated 1983 payor information form filed by Pioneer Gas Products Company and two other forms filed by Pioneer dated July 1, 1986, and Dec. 31, 1986. The Dec. 31, 1986, form indicated that Dec. 31 was an "end date." On Sept. 12, 1986, Mesa filed a PIF for this lease; the form indicates at the top left hand corner that it is a "revised" form, to be "added" on Jan. 1, 1987. Also submitted for this lease is a PIF filed by Mesa on Mar. 25, 1989.

Lease Nos. 607-033483 and 607-061149: PIF's for each lease filed by Pioneer dated May 30, 1984, and Dec. 31, 1986 (each indicating end dates); and PIF's filed by Mesa on Jan. 1, 1987, and Mar. 27, 1989.

In answer to the Area Manager, Mesa argued it was not a lessee, as defined in FOGRMA, because the leases wer owners of the leases had not assigned to Mesa their obligation to make royalty payments, and neither Mesa's payment of t of PIF's made it "a guarantor of the owners' royalty obligations." 5/ Further, Mesa argued, MMS pointed to no regulation or Mesa's responsibility to pay the lease owners' royalties.

The September 20, 1990, decision of the Deputy to the Assistant Secretary -- Indian Affairs (Operations) proceed it stated that Pioneer acted as agent for the lease owners by remitting royalties on their behalf:

> While an agent (royalty payor) is not ordinarily bound by the obligations of the contract between a principal (lesse party (lessor), the agent can become bound to the third party * * * if he conducts himself in such a way as to indic to be bound. [6/] * * * Both Pioneer and Mesa conducted themselves in such a way as to indicate their intent to be completed a PIF for MMS, both were assigned a payor code number, and both assumed the responsibility to make ments for the lessees. Thus, Pioneer and Mesa represented to MMS that they would act as the royalty payor on lessees of record, and that the royalty payments would be proper and in accordance with all the regulations, and th be responsible if the payments were in error.

(Decision at 2-3).

5/ Mesa's Comments in Opposition to MMS' Report, dated June 6, 1989, at 6.
6/ MMS cited Lake City Stevedores, Inc. v. East West Shipping Agencies, Inc., 474 F.2d 1060 (5th Cir. 1973), in suppo decision continued:

Second, the September 20, 1990, decision held Pioneer and Mesa were lessees under the FOGRMA definition, supra no

that "assign" means to "appoint, allot, select, or designate for a particular purpose or duty," citing Black's Law Dictionary (

concluded:

> [T]he completion by Pioneer (and later, Mesa) of PIF's for the subject leases evidence[s] the designation of Pio
> * Mesa) as the party responsible for the disbursement of royalty payments. Therefore, [under the definition
> Pioneer and Mesa were assigned an obligation to make royalty payments, and are considered lessees within th
> FOGRMA and the leases." [Emphasis in original.] [7/]

(Decision at 4).

Finally, the September 20, 1990, decision cited Forest Oil Corp., 113 IBLA 30, 41-42, 97 I.D. 11, 18 (1990), in

that "[w]hile it is true that the lease owners are ultimately responsible for payment of the royalties due under their leases, it

lease owners are the only parties to whom the Government may direct a demand for payment."

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fn. 6 (continued)

"An agent may be responsible when he voluntarily incurs a personal responsibility, either expressly or implicitl
to be personally bound or the agreement can be inferred by implications reasonably drawn from all facts and circumstance
Industries, Inc. v. Roman Ceramics Corporation, 652 F.2d 340, 344 (3rd Cir. 1981)."
(Decision at 3).

7/ Here the decision cited Philips Petroleum Co., MMS-84-0030-O&G (Sept. 15, 1986), 4 Gower Federal Service, Royalty
ment, Rocky Mountain Mineral Law Foundation. In that case, Phillips
assumed the lessee's obligation to pay royalty. See Phillips 66 Natural Gas Co., 107 IBLA 223, 226 (1989).

> [IBLA] * * * concluded that in view of the definition of "lessee" in FOGRMA * * * the filing of a PIF by a pay
> also a co-lessee) indicated that the payor was assigned and accepted the responsibility of rendering timely and co
> payments on behalf of its co-lessees. Thus, IBLA affirmed the agent's liability for the royalty due on the share o
> attributable to the co-lessees.

(Decision at 4-5).

On appeal to us, Mesa responds to the statement in the September 20, 1990, decision that filing a PIF made it a lessee b the [PIF] * * * makes any reference to" the filer's becoming a guarantor of the owner's royalty obligations. 8/ In addition, Mes FOGRMA defines "lessee" as a person "who has been assigned an obligation to make royalty or other payments required b also requires that a "lessee * * * shall notify the Secretary, in the time and manner as may be specified by the Secretary, of a may have made of the obligation to make any royalty or other payment under a lease." 30 U.S.C. § 1712(a)(2) (1988). Mes any notices that the Secretary of Interior has received in accordance with Section [1712(a)(2)] of FOGRMA assigning a roy to Mesa or [Pioneer]" (Supplemental Statement of Reasons (SOR) at 14). MMS responds that "Mesa and Pioneer filed P documents that are responsive to Mesa's request" (Answer at 16). Mesa replies that the

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8/ (Supplemental SOR at 7). Mesa adds: "It is ludicrous to suggest that any company would agree to guarantee some obligation without receiving any compensation for its services and without seeking any means to obtain reimbursement for a other company's behalf." Id.

PIFs it submitted were not prepared by a lessee and did not identify any lessees making an assignment and therefore canno an assignment required by section 1712(a)(2) (Reply of Mesa at 2-3).

Mesa also argues that the Board's decision Forest Oil Corp., supra, involved "a co-lessee [that] * * * had contract for the royalty payments due from other lessees," and that Mesa neither is a lessee nor has made any such agreement (S Although it acknowledges these factual differences, MMS nevertheless concludes that "pursuant to IBLA's rationale in Fo for the additional royalties" (Answer at 15). Mesa replies that "Forest Oil did not conclude that a Payor Information I assignment. Rather, the Board * * * concluded that under its operating agreement, Forest, as operator-lessee, had contractuall payments for its own interest and the interest of the other lessees" (Reply at 3).

III. The Oil and Gas Royalty Accounting System

One of the legislative purposes behind the enactment of FOGRMA was prevention of inadequate or inacc Government for oil and gas royalties due on Federal and Indian leases. The legislative history of the Act speaks to this pu

> Under Federal and Indian leases, the lessee has the contractual obligation to pay royalties, fully and accu due. It is customary in the oil business to split up shares in leases and it is common to trade them frequently. The M

> royalty payments not just from the lessee or his agent, but from any owner of an interest in a lease and also in son other parties such as purchasers. While a lessee must notify the Department of the Interior of an assignment of a lease, USGS [United States Geological Survey] had no capacity for tracking these assignments. Because sha change hands frequently and are not always reported, the USGS often did not know who all the payors were o lease.
>
> Under the old system, the USGS kept its royalty records primarily on the lease as a whole; but payment wa by individual interests on the lease or other smaller units. If royalties for a particular lease were underpaid, the U way of knowing which party was responsible. This type of problem could occur repeatedly because USGS fai essential data; but even the data it did collect was often misplaced and irretrievable. Entire accounts were ofter allowing an interest holder to entirely evade his royalty obligation.

H.R. Rep. No. 859, 97th Cong., 2d Sess. 16, reprinted in 1982 U.S. Code Cong. & Admin. News 4268, 4270.

Thus, section 101(a) of FOGRMA, 30 U.S.C. § 1711(a) (1986), requires the Secretary to "establish a comprehens and fiscal and production accounting and auditing system to provide the capability to accurately determine oil and gas penalties, fees, deposits, and other payments owed, and to collect and account for such amounts in a timely manner." The System was developed by the MMS Royalty Management Program "to accomplish these functions." MMS Royalty Manager Payor Handbook, Vol. I, Introduction at 1-1. It is within this framework that the PIF was developed.

IV. The Law Applicable to Who is Liable to Pay Royalties

[1] As we observed in Forest Oil Corp., 113 IBLA at 41, n.10, 97 I.D. at 18, n.10, in enacting section 102(a) o
§ 1712(a) (1988), Congress did not expand the Secretary's authority, but allowed him to determine, under existing authority
responsible for making royalty payments. 9/ Because the leases in this case are located on allotted Indian lands, we look
implementing regulations; (2) the provisions of the Act of March 3, 1909, as amended, 25 U.S.C. § 396 (1988), and its imple
(3) the common law.

A. The Federal Oil and Gas Royalty Management Act

[2] As indicated above, section 102(a) of FOGRMA, 30 U.S.C. § 1712(a) (1988), provides that a lessee must m
the time and manner specified by the Secretary and notify the Secretary, in the time and

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9/ "Subsection [102](a) sets forth the duties of lessees and interest holders to make all payments required under the lease
specified by the Secretary, and to notify, and request approval of the Secretary of any assignment or other transfer the lessee
to make. * * *

"The Committee is not granting the Secretary new authority to designate a 'principal payor', i.e., a single payor
to make payment for any royalty obligation on a lease. The Committee
is allowing the Secretary the discretion to determine under existing authority of law which person (i.e. lessee, interest hold
etc.) is responsible for making royalty payments to the United States.

"It should be made clear that under section 102(a)(2) notification to the Secretary of any assignment or other trans
but approval of the assignment for transfer by the Secretary is not a condition precedent to the parties initiating the steps
assignment or transfer."
H.R. Rep. No. 859, supra at 4282.

manner specified by the Secretary, that he has assigned this obligation. 10/ Correspondingly, section 3(7) of FOGRMA, 30 U

defines "lessee" for purposes of that Act to include "any person who has been assigned an obligation to make royalty or oth

the lease."

The regulation requiring notification of the assignment of payment responsibility and the regulation defining "lesse

provisions. 30 CFR 218.52(a) provides that "[w]hen the lessee or revenue payor assigns any paying responsibility to any oth

notified within 30 days of the assignment." 11/ And "lessee" is defined as

> any person to whom the United States, an Indian Tribe, or an Indian allottee issues a lease, and any person w
> assigned an obligation to make royalty or other payments required by the lease. This includes any person who h
> in a lease as well as an operator or payor who has no interest in the lease but who has assumed the roya
> responsibility.

30 CFR 206.101. The phrase "who has been assigned an obligation" in the first sentence of the regulation was a revision of th

response to comments objecting that the proposed language -- "who

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10/ Specifically, section 102(a) states:

"A lessee--

"(1) who is required to make any royalty or other payment under a lease or under the mineral leasing laws, shal
the time and manner as may be specified by the Secretary; and

"(2) shall notify the Secretary, in the time and manner as may be specified by the Secretary, of any assignment th
of the obligation to make any royalty or other payment under a lease or under the mineral leasing laws."

11/ Neither 30 CFR 218.52 nor the regulation requiring the filing of a PIF, 30 CFR 210.51, supra note 4, indicates the PIF is to
required by 30 CFR 218.52(a).

has assumed an obligation" -- was "too broad." One commenter stated: "* * * Thus, under the proposed definition, the v

would become subject to all of the royalty valuation obligations imposed on lessees and would, consequently, become directly

of the application reporting and payment regulations, a result which is not sanctioned by existing statutory law." 53 FR 12

MMS agreed with the suggestion to make the definition consistent with section 3(7) of FOGRMA:

MMS Response: The MMS agrees with the comments regarding consistency with the definition found in FOG
replaced the word "assumed" with the word "assigned." It should be specifically noted that the term "assigned
restricted

12/ The full preamble discussion of the comments on the proposed definition of "lessee" reads:

"'Lessee'--Several industry representatives and trade groups commented that the originally proposed definition
One commenter stated that 'as drafted, it would include any person who
pays royalties, notwithstanding the fact that such payors may have no contractual obligation to the lessor to make royalty p
the proposed definition, the voluntary royalty remitter would become sub-ject to all of the royalty valuation obligations impos
consequently, become directly liable for any infractions of the application [sic] reporting and payment regulations, a result
by existing statutory law.' To be consistent with that law, industry suggests that MMS substitute for its definition of 'lesse
one which is contained in section 3(7) of the Federal Oil and Gas Royalty Management Act (FOGRMA), 30 U.S.C. 1702(

"Most of these commenters favored this definition because 'the statutory definition includes persons who have be
have been assigned an obligation to make royalty or other payments required by the lease. The gas proposal would wrongfu
to include any person who has assumed an obligation to make such payments.'"

"One industry commenter recommended adding the phrase 'for royalty payment purposes' directly after the word
of clarity. 'We do not believe it is the intent of Congress that a lessee be able to divest himself of all lease obligations
assuming royalty responsibility.'"

53 FR 1242 (Jan. 15, 1988) (emphasis in original).

> to the assignment of an obligation to make royalty or other payments required by the lease. It is in no way rel
> "assignments" approved through the MMS, BLM, or BIA. It is MMS's intent that operators and others who pay roy
> these regulations in determining the royalties due. The lessee of record is ultimately responsible if the operator o
> does not properly pay the royalties due the lessor.

53 FR 1242 (Jan. 15, 1988).

Thus, for a person who holds no interest in a lease to be liable for the lessee's royalty payments, the lessee and the

to an assignment of the obligation to pay royalty, and notice of that assignment must have been filed with the Secretary.

However, a PIF is not an assignment. As indicated above, supra, note 4, the PIF is the document that must be file

13/ A PIF provides spaces for a lease number and for the name of a payor and a revenue source operator ("if different fr

provide space for the name of any lessee or assignee. It does not contain any language indicating an intent to transfer, assign,

-- any lease right, interest, or obligation. There is no language on the

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13/ "The completed form must be filed by the party who is making the rent or royalty payment (payor) for each revenue s

A "payor" is defined for Federal leasing purposes as "any person responsible for reporting royalties from a Federa MMS 2014 [the Report of Sales and Royalty Remittance]." 30 CFR 208.2.

A revenue source, according to the Oil and Gas Payor Handbook, Vol. I, section 2.6.2, is "an accounting subdivis lease. It is a source of production within a lease from which the MMS expects to receive royalties." A revenue source m unitized production allocation, communitized production allocation, lease production, or compensatory royalty. The reven No. 607-032354 is lease production; Lease Nos. 607-099483 and 607-061149 are both subject to communitization agreem

form that would lead a payor to understand that submitting the form is tantamount to an agreement between lessee and payo an assignee under the lease or agrees to assume the lessee's obligation to pay royalty. The only "fine print" on the form is Paperwork Reduction Act that the information "is being collected to set up an automated accounting data base for Federal an production and sales. MMS will use the information to monitor and collect rents and royalties due the Government and India provide no space for a signature by the payor. With these contents, the PIF cannot constitute an assignment of the obligati it either evidence of or notice of an assignment.

The definition of lessee in 30 CFR 206.101 includes a "payor who has no interest in the lease but who has assu responsibility." Under its proposed definition, MMS anticipated that the assumption of the responsibility to pay royalty woul agreement with the persons who have the actual lease interest." 14/ As noted above, a PIF contains no language indicating responsibility.

14/ The preamble to the proposed rule definition of "lessee" stated:

"The MMS is proposing to expressly include in the definition all persons who may have to make royalty payme all persons who have an interest in a lease as well as an operator or other payor, including in some instances, the purchaser w payment responsibility by contract or other agreement with the persons who have the actual lease interest. By using this product valuation regulations, it would not be necessary to use multiple terms such as lessee/payor/operator throughout the not intended to change any contractual obligations under the lease instrument between the lessor and the current or origina it pertains to royalty valuation."

52 FR 4734 (Feb. 13, 1987) (emphasis supplied).

Therefore, filing a PIF does not alone constitute the assumption of royalty payment responsibility.

This conclusion is consistent with our previous decisions. MMS argues, based on our decision in Forest Oil Co of a PIF evidences an assignment of the royalty obligation under section 102(a) of FOGRMA and renders the person filing recently that our decision in Forest Oil Corp. 15/ was based on the fact that the unit operator was obligated under the unit agree for the other co-lessees and filed PIF's for that reason:

> In Forest Oil Corp., supra, Forest was the named unit operator under an agreement that specified payment of roy of its obligations. In fulfilling that obligation, Forest filed a PIF indicating it was responsible for all royalties. we held that Forest fell within the definition of "lessee" as "any person who has been assigned an obligation to or other payments required by the lease."

Phillips Petroleum Co., 121 IBLA 278, 284 (1991). 16/ See Forest Oil Corp., 113 IBLA at 39, n.8, 41, 97 I.D. at 17, n.8, 1

15/ Forest Oil was reconsidered on other grounds in Forest Oil Corp. (On Reconsideration), 116 IBLA 176, 97 I.D. 239 (19 subsequently reviewed by the Director, Office of Hearings and Appeals,
and reversed in part. Forest Oil Corp., 9 OHA 68, 98 I.D. 248 (1991).
See also Mesa Operating Limited Partnership, 98 I.D. 193 (1991).

16/ In Phillips Petroleum Co., supra, "Phillips owned partial interests in the leases and, pursuant to gas purchase contracts, p attributable to the other owners (co-lessees) and remitted royalty for itself and the other owners for all the production from the at 284. MMS argued that, like Forest Oil, "Phillips * * * notified MMS of its responsibility to pay all royalties from the lease Id. We set aside the portion of MMS's decision that required Phillips to recalculate royalties for its co-lessees, stating:

> "The record, however, does not contain any PIF's. Nor is there any other indication that Phillips assumed legal

Corp. does not stand for the proposition that simply filing a PIF, without more, obligates a person to pay royalties. Rath obligated by contract under the terms of the unit agreement, i.e., under existing authority of law to pay royalties. 17/

Thus, filing a PIF does not "evidence the designation" of the person filing it as responsible for paying the royalty as the September 20, 1990, decision stated. There must be a document assigning the obligation to make royalty payments, o stating this obligation as there was in Forest Oil Corp., supra. MMS may specify the "time and manner" for a lessee to notify or agreement. 30 U.S.C. § 1712(a)(2).

B. Leasing of Minerals on Lands Allotted to Individual Indians

[3] Leasing of minerals on lands allotted to individual Indians is governed by 25 U.S.C. § 396 (1988) and its in rather than by the Mineral Leasing Act of 1920, 30 U.S.C. § 181 (1988). 18/ In the

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fn. 16 (continued)
co-lessee's royalties * * *. [Unlike Forest Oil Corp.], in this case it
is not apparent from the record that Phillips was assigned or assumed legal responsibility for payment of royalties for all o leases."
121 IBLA 284-85. MMS has filed a Motion for Partial Reconsideration of this part of our decision, accompanied by PIF's
17/ In finding Forest Oil was liable for the royalty on the share of production attributable to other working interests, "consistent with the obligations assumed by the unit operator acting as a payor prior to FOGRMA." 113 IBLA at 41, 97 I.
18/ Melvin L. Collier, A-25878 (July 3, 1950).
"The Mineral Leasing Act of February 25, 1920, authorizes * * * the issuance of oil and gas leases on lands 'ow [30 U.S.C. § 181 (1988)]. Indian reservation lands which have been allotted

Act of March 3, 1909, Ch. 263, 35 Stat. 781, 783, Congress provided that all lands allotted to Indians may be leased by the

> for mining purposes for any term of years as may be deemed advisable by the Secretary of the Interior; and the Se
> Interior is authorized to perform any and all acts and make such rules and regulations as may be necessary for th
> carrying the provisions of this section into full force and effect * * *.

25 U.S.C. § 396 (1988). Part 212 of 25 CFR contains the implementing regulations. Under 25 CFR 212.14(a), royalties must b of the Bureau of Indian Affairs (BIA) for deposit to the credit of the Indian lessor(s) unless the officer authorizes the lessee payment to the lessor(s) under § 212.14(b). See also 30 CFR 218.51(e)(3)(i). Royalties must be paid by the lessee. 25 CF lease or any interest in a lease may be assigned only with the approval of the Secretary; the assignee must be qualified

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fn. 18 (continued)
to individual Indians are not 'owned by the United States,' within the meaning of the quoted phrase as used in the Mineral L 103, 114 (1942).) Consequently, the Mineral Leasing Act is not applicable to lands [allotted to individual Indians]."
25 U.S.C. § 396 codifies the Act of Mar. 3, 1909, 35 Stat. 781, 783, as amended by the Act of Aug. 9, 1955, 69 Stat. 540.
Cf. Benson-Montin-Greer Drilling Corp. v. Acting Albuquerque Area Director, BIA, 21 IBIA 88, 98 I.D. 419 (1 Albuquerque Area Director, BIA, 18 IBIA 315, 97 I.D. 215 (1990).
The most recent statute relating to the mineral development of Indian lands, the Indian Mineral Development A 2101-2108 (1988), does not affect these leases. 25 U.S.C. § 2105 (1988).
19/ 25 CFR 212.19 provides that "[l]essees may make arrangement with the purchasers of oil for payment of the royalties orders permitting the purchasers to withhold the royalty interest shall be executed. By its terms this provision does not ap

to hold a lease; and the assignment must be filed with the BIA superintendent. 25 CFR 212.22(a) and (c). 20/ See HCB Indu Area Director, BIA, 18 IBIA 222 (1990); Administrative Appeal of W. J. B. Graham & William S. Graham v. Area Dir All Other Interested Parties, 4 IBIA 205, 82 I.D. 568 (1975).

In order to determine whether the record contains any documents that indicate that an assignment of the lease responsibility was made by lessees to Pioneer or Mesa, or assumed by Pioneer or Mesa, we requested MMS to file with the Indian Lease No.'s 607-032354, 607-033483, and 607-061149. MMS did not provide the files but did submit copies of the le of record title affecting them. No interest in a lease is assigned to either Pioneer or Mesa. Further, the assignments ex assignees, not Pioneer or Mesa, agree to fulfill "all the obligations" of the leases. 21/

20/ 25 CFR 212.22 provides, in part:

"(a) Leases hereafter approved, or any interest therein, may be assigned or transferred only with the approval of the and to procure such approval the assignee must be qualified to hold such lease under existing rules and regulations and sh bond conditioned for the faithful performance of the covenants and conditions thereof.

"(b) No lease or any interest therein or the use of such lease shall be assigned, sublet, or transferred, directly or i drilling contract, or otherwise, without the consent of the Secretary of the Interior.

"(c) Assignments of leases and stipulations modifying the terms of existing leases shall be filed with the super after the date of execution."

21/ Each assignment contains the following language:

"Acceptance by Assignee

"The assignee in the above and foregoing assignment, made subject to the approval of the Secretary of the Inter assignment and agrees to fulfill all the obligations, conditions, and stipulations

Because these assignments did not indicate whether any of the assignees had subsequently assigned their oblig

Pioneer or Mesa, we requested Mesa to provide copies of gas purchase contracts, division orders, or any other document tha

Pioneer or Mesa was assigned the obligation to pay royalty. The gas purchase con-tracts submitted by Mesa between the

(sellers) and Pioneer (buyer) provide in Article X that Pioneer is to make monthly payment to sellers for gas taken during the p

remit for Seller's account to the proper taxing authority, production taxes for which Seller is liable and shall make appropriate

settlements due thereunder." There is no mention in the contracts of Pioneer's responsibility to remit royalty payments. 22

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fn. 21 (continued)
in said described indenture of lease, when assigned, and the rules and regulations of the Secretary of the Interior applicab
proper bond guaranteeing a faithful compliance with said lease and this agreement."
This language corresponds to the requirements of 25 CFR 212.22(a), supra note 21. The assignments were all approved.
22/ A production tax is not a royalty. Williams and Meyers define "production tax" as:

"(1) In one usage, a SEVERANCE TAX (q.v.); that is, a tax levied on each unit of production -- barrell of oil o
gas. Severances [sic] taxes are usually levied as occupation taxes.

"(2) In another and inconsistent usage, an ad valorem property tax, measured by the value of the product remo
value
less certain expenses.

"Thus the same term may describe two different sorts of taxes, measured by different means. The local typ
occupational severance tax or a real property ad valorem tax, seems to govern the meaning of the term in each state."
Williams and Meyers, Manual of Oil & Gas Terms, Vol. 8, at 974 (1992).

A royalty, in contrast, is

"(1) The landowner's share of production, free of expenses of production. (2) A share of production, free of expe
an OVERRIDING ROYALTY (q.v.) of 1/8 of the 7/8 working interest. * * * Royalty may be payable in kind (that is, the
to a share
of the oil or gas as produced), or it may be payable in money (that is, the royalty owner is to be paid in money for the valu

Section 4 of the contracts provides that "neither party shall be considered notified of any conveyance, or transfer of interes such other party has been furnished with written notice and true copy of such conveyance or transfer." Mesa states it is not a transfer.

As MMS indicated in its response to the comments on its proposed rule defining lessee, the assignment of the ob payments is not related to an assignment of a lease or an interest in a lease that must be approved by BIA. Even if the obliga an interest in a lease within the meaning of 25 CFR 212.22, there is no evidence in the record that such an interest has bee Mesa, or that Pioneer or Mesa assumed the obligation to make royalty payments.

C. The Common Law of Agency

[4] We cannot accept the argument that by filing PIF's and making royalty payments Mesa and Pioneer indicated t as

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fn. 22 (continued)
share of the product). * * * Although the royalty is not subject to costs of production, usually it is subject to costs incurr production or gathering taxes, costs of treatment of the product to render it marketable, costs of transportation to market. assignable."
Id. at 1087-88. The statutory definition of royalty is "any payment based on the value or volume of production which is du an Indian tribe or an Indian allottee on production of oil or gas * * *." 30 U.S.C. § 1702(14) (1988).

agents by the lessees' obligation to pay royalties. The cases cited in the September 20, 1990, decision, supra, note 6, state the
is not personally liable for a contract obligation between his principal and another party -- in this case, the lease obligatio
he intended to be. "In the absence of an unambiguous contract, all relevant extrinsic evidence may be considered in deter
has sufficiently indicated an intent to become personally bound." Lake City Stevedores, Inc. v. East West Shipping Agenc
1063 (5th Cir. 1973). Absent an assignment to Mesa or Pioneer of the obligation to pay royalty or an agreement by them t
the filing of PIF's and the payment of royalties is sufficient evidence of an intent to be ultimately liable. Although it may b
for Mesa and Pioneer, as purchasers of the gas, to pay the royalties and submit the required forms, "there was no valid busi
Pioneer] to bind itself." Lake City Stevedores, supra at 1064; see note 8, supra. As discussed above, the PIF's contain no langu
to be bound to the lessees' obligation to pay royalty, and there
is no other extrinsic evidence indicating either company intended to be bound. 23/

23/ The Sept. 20, 1990, decision also states an agent may become bound by his principal's obligations to a third party by a se
Jur. 2d, Agency, § 302; that Federal regulations defining the obligations of the agent can be the basis for such an agreemen
& Guaranty Co. v. Clover Creek Cattle Co., 452 P.2d 993 (Idaho 1969); and that 30 CFR 218.100(c) requires that a payor s
accordance with 30 CFR 218.51. We do not find in FOGRMA, as the Idaho Supreme Court did in the Packers and Stockya
supra at 1003, provisions that would supersede the common law of agency governing liability of a person paying royalty o
regulations cited deal with method of payment, not liability.

We hold that the filing of PIF's and making of royalty payments by Pioneer and Mesa do not result in Mesa's being a le
liable as an agent for the lessees' obligation to pay royalty. Mesa is therefore not required to pay the amount of Pioneer's u
Accordingly, we find it unnecessary to reach other issues raised by the parties on appeal.

We recognize that one of the purposes of FOGRMA is to fulfill the trust responsibility of the United States for the
oil and gas resources and that the Congress directed the Secretary to "aggressively carry out his trust responsibility in the adr
and gas." 30 U.S.C. §§ 1701(a)(4), (b)(4) (1988). The Department is responsible for collecting the royalties due these India
presumably the working interest holders or, ultimately, the lessees. However, it may not do so from Mesa under the circur

V. Procedural Motions Denied

In December 1988, Mesa also filed a request that MMS stay the provisions of the November 1988 letter. MMS
June 21, 1990, requiring Mesa to post a bond or letter of credit for $5,642,000 as
a surety for Pioneer's alleged $7,362.51 underpayment. 24/ On July 20, 1990, Mesa filed a notice of appeal of this decisio

24/ Only Mesa's request for stay is in the record forwarded to the Board
by MMS. Neither the June 21, 1990, MMS decision nor Mesa's July 20, 1990, notice of appeal were included. No explar
difference between the surety demanded and the underpayment.

Assistant Secretary -- Indian Affairs (Operations). On October 30, 1990, Mesa filed a Motion for Discovery concerning i
Because this appeal was not in the record, we requested a copy of its notice of appeal, which Mesa provided on October 31, 1
SOR filed December 21, 1990, Mesa referred to this appeal and stated its "understanding that [Mesa's] appeal of the June 21
denying the company's stay request had been consolidated with the company's appeal in this case, and that this consolidated a
docket number IBLA 91-55" (Supplemental SOR at 4, n.2). In our January 4, 1991, order we observed that neither the June
nor any documents relating to it were in the record and requested MMS to respond to Mesa's Motion for Discovery. In its A

MMS is recalculating the amount of surety that the Department will require Mesa to post. When Mesa is notified

surety amount, MMS will provide Mesa the information necessary for Mesa to understand and challenge requirement. Thus, discovery is not necessary or appropriate in this instance.

It therefore appears that the Deputy to the Assistant Secretary has not rendered any decision concerning Mesa's request for a never become ripe for review by this Board. Therefore, Mesa's July 20, 1990, notice of appeal is not consolidated with this a Discovery concerning that appeal is denied. However, we note that our decision reversing the November 1988 audit letter moc responsibility to post a bond.

Because we found the briefs sufficient for our disposition of this appeal, Mesa's request for oral argument is de

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 20, 1990, decision of the Deputy to the Assistant Secretary -- Indian Affairs (Operations) is reversed and remanded.

Will A. Irwin
Administrative Judge

I concur:

David L. Hughes
Administrative Judge