

HARKEN SOUTHWEST CORP.

IBLA 97-519 & 97-584

Decided August 17, 2000

Appeals from Deputy Commissioner of Indian Affairs, Bureau of Indian Affairs, decisions denying appeals stemming from the deduction of processing costs when calculating the royalty for natural gas liquid products produced from Indian tribal lands. MMS-94-0451-IND & MMS-93-0842-IND.

Motion to consolidate appeals granted; decision in IBLA 97-519 affirmed; decision in IBLA 97-584 affirmed.

1. Federal Oil and Gas Royalty Management Act of 1982: Royalties—Indians: Mineral Resources: Oil and Gas: Royalties—Oil and Gas Leases: Royalties: Payments

When computing the royalty due an Indian tribe for natural gas produced and sold from tribal lands the producer is required to abide by the applicable Federal regulations not inconsistent with the terms of a minerals agreement issued pursuant to the Indian Mineral Development Act of 1982, 25 U.S.C. §§ 2101-2108 (1994). Thus, not having gained prior MMS approval of a higher allowance, the producer was restricted by 30 C.F.R. § 206.158(c)(2) (1994) to a deduction of not more than two-thirds of the value of the products when valuing natural gas liquid products derived from processing natural gas for royalty computation purposes.

APPEARANCES: Thomas W. Clawson, Esq., Salt Lake City, Utah, for appellant, Harken Southwest Corporation; Howard W. Chalker, Esq., Geoffrey Heath, Esq., and Christopher P. Salotti, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Minerals Management Service and the Bureau of Indian Affairs.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Harken Southwest Corporation (Harken) has appealed two decisions, dated January 24, 1997, and June 23, 1997, which were issued by the Deputy

Commissioner of Indian Affairs, Bureau of Indian Affairs (BIA). 1/ In her January 1997 decision, the Deputy Commissioner denied Harken's July 12, 1994, letter protesting the applicability of the Federal regulations to the calculation of royalties, rather than the minerals agreement under which the natural gas at issue is produced. In its protest, Harkin also objected to the regulatory requirement that it file a request with the Minerals Management Service (MMS) seeking permission to exceed the regulatory limitation on the processing allowance used in valuing natural gas liquid products (NGLP) produced and sold from Indian lands when computing the royalty payable to the Navajo Tribe of Indians (Tribe). 2/ In her June 1997 decision, the Deputy Commissioner denied Harken's appeal from a September 15, 1993, bill issued by the Royalty Management Program (RMP), MMS, directing Harken to pay additional royalty, based upon the processing allowances taken by Harken which were deemed inappropriate by RMP. MMS treated the protest as an appeal and forwarded it to BIA for review.

During the relevant time period Harken produced wet natural gas from Tribal land in San Juan County, Utah. The wet gas production was transported to the Aneth Gas Plant, where it was processed into NGLP's and residue gas. The NGLP was sold, and the proceeds were distributed pursuant to a July 20, 1987, "Operating Agreement" (No. G-8707-1116) (1987 Agreement) between Chuska Energy Company, Harken's predecessor-in-interest, and the Tribe. 3/ (Statement of Reasons for Appeal (SOR), IBLA 97-519, at 2-3; 1987 Agreement at 40.) Section 15 of the 1987 Agreement addresses distribution of the gross proceeds derived from the sale of the natural gas. Subsection (d) provides:

It is understood and agreed to between the Owner [Tribe] and Operator [Harken and its predecessor-in-interest] that for the purposes of determining gross proceeds received by the Operator * * * that reasonable costs paid by the Operator for transporting oil, and costs paid by the Operator to transport and process gas shall first be deducted from gross sales proceeds prior to Owner's share of gross proceeds being calculated [pursuant to section 15(a) through (c) of the 1987 Agreement].

(1987 Agreement at 17.)

1/ The appeals are from Jan. 24, 1997, and June 23, 1997, decisions issued by the Deputy Commissioner of Indian Affairs, docketed as IBLA 97-519 and IBLA 97-584. These appeals present the same basic underlying legal issue, and they are hereby consolidated.

2/ On July 12, 1994, Harken filed a Request to Exceed Regulatory Allowance Limitation, Form MMS-4393, seeking permission to exceed the regulatory limitation on the processing allowance for the production subject to the 1987 Agreement. It was noted that the form was filed under protest.

3/ The Agreement was executed on Feb. 18, 1987, and approved by the Area Director, Navajo Area, BIA, on behalf of the Department of the Interior, on July 20, 1987, the effective date of the agreement pursuant to the Indian Mineral Development Act of 1982 (IMDA), 25 U.S.C. §§ 2101-2108 (1994).

The royalties paid to the Tribe were based on the defined value of the NGLP sold, which consisted of the gross proceeds received from the sale, less all costs of processing the natural gas into NGLP's and residue gas. The regulation at 30 C.F.R. § 206.158(c)(2) (1994) (now 30 C.F.R. § 206.178(c)(2) (1998)) limits the processing allowance deduction to two-thirds (66-2/3 percent) of the value of the product sold if MMS has not granted specific permission to take a deduction in excess of 66-2/3 percent in the manner set out in 30 C.F.R. § 206.158(c)(3) (1994) (now 30 C.F.R. § 206.178(c)(3) (1998)). The propriety of the processing allowance deduction taken by Harken for processing the wet gas into NGLP allowance is the underlying issue in these appeals. ^{4/} Harken contends that the royalty should be calculated pursuant to the 1987 Agreement. MMS contends that the Federal regulations control.

In her January 1997 decision, the Deputy Commissioner held that the 1987 Agreement did not exempt Harken from the requirement of 30 C.F.R. § 206.158(c)(3) (1994) to seek and obtain MMS approval before deducting in excess of two-thirds of the sales price as a processing allowance when valuing NGLP's for royalty computation. She noted that the "Agreement * * * clearly states that the Appellant agrees to be supervised and monitored by the Federal rules and regulations governing production and sales from * * * Indian leases." (Decision, dated Jan. 24, 1997, at 2.)

In the appeal docketed as IBLA 97-584, Harken appealed a September 15, 1993, MMS "Bill for Collection" (No. ABIL 06310057), directing it to pay an additional \$1,197.58 in royalties. This amount represented royalty on the difference between two-thirds of the value of NGLP produced and sold from Indian tribal lease No. 525-005297-0 during the period from January through March 1992 and the processing deduction Harkin had taken for the same NGLP. The deduction of the difference between two-thirds of the sales price and the actual cost of processing the wet gas was not allowed because Harken had failed to submit Form MMS-4109 ("Gas Processing Allowance Summary Report") and gain permission for the additional deduction before filing Form MMS-2014 ("Report of Sales and Royalty Remittance"). ^{5/}

In her June 1997 decision, the Deputy Commissioner held that Harken was required by 30 C.F.R. § 206.159(a)(1)(i) and (c)(1)(i) (1994) to submit

^{4/} Harken's appeal in IBLA 97-519 also raises the question whether Harken took a deduction for all of the costs of transporting the wet gas to the Aneth Gas Plant, contrary to applicable Federal regulations, 30 C.F.R. § 206.156(c)(2) and (3) (1994). However, its appeal to the Director, BIA, and its subsequent appeal to the Board focus exclusively on processing costs. See, e.g., SOR, IBLA 97-519, at 6. This Opinion addresses that issue. In any event, our holding regarding the applicability of Federal regulations when valuing production under the 1987 Agreement for royalty purposes is also applicable to transportation costs.

^{5/} Harken paid the disputed amount under protest when it filed its appeal of the Sept. 15, 1993, MMS bill.

Form MMS-4109 before taking a processing allowance in excess of two-thirds. She noted that the 1987 Agreement expressly stated that Harken was subject to supervision and monitoring in accordance with Federal regulations, and it was therefore required to submit a Gas Processing Allowance Summary Report and gain permission for the additional deduction before filing its Report of Sales and Royalty Remittance. (Decision, dated June 23, 1997, at 2.) She further held that Harken failed to qualify for the additional processing allowance pursuant to 30 C.F.R. § 206.159(d)(1) (1994) (now 30 C.F.R. § 206.179(d)(1) (1998)) when it failed to file the required form. (Decision, dated June 23, 1997, at 3.)

Harken appealed both decisions pursuant to 30 C.F.R. § 290.7. On appeal, it contends that it is permitted to deduct all of its actual processing costs (even when in excess of the two-thirds limitation), and need not notify MMS in advance or seek prior approval because the calculation of royalties is governed by section 15(d) of its 1987 Agreement. It states that "[F]ederal regulations do not apply to [NGLP] production covered by the 1987 Agreement because the parties' contract specifically states otherwise, and the specific language of the contract overrides the inconsistent [F]ederal regulations." (SOR, IBLA 97-519, at 6.)

Harken refers to the specific language in section 15(d) of the agreement providing that "costs paid by the Operator to * * * process gas shall first be deducted from gross sales proceeds prior to Owner's share of gross proceeds being calculated," arguing that it permits Harken to deduct all of its processing costs, without prior notice to or approval by MMS. (1987 Agreement at 17; see SOR, IBLA 97-519, at 6-9; SOR, IBLA 97-584, at 26.) It argues that this language is "plain, simple, clear, and unambiguous," and does not limit the processing costs deduction "by any 'reasonableness' [standard or] * * * to a portion of the value of the NGL[P's]," although the parties could certainly have done so. (SOR, IBLA 97-584, at 14.) It also contends that while the parties could have made the deduction "conditioned upon the MMS' prior * * * approval," approval is not necessary "because there is no need to determine whether a claimed processing cost is 'reasonable' or whether the claimed cost exceeds a regulatory limitation." Id.

Harken argues that under 30 C.F.R. §§ 202.150(b)(3) and 206.150(b) (1994), when there is a conflict between the regulations and an agreement, the agreement controls. (SOR, IBLA 97-519, at 7; SOR, IBLA 97-584, at 25.) It asserts that section 15(d) of the 1987 Agreement affords Harken and the Tribe an "independent contractual right" regarding the deductible processing costs in royalty computations, separate and apart from conflicting Federal regulations. (SOR, IBLA 97-584, at 3.) According to Harken, the deductions agreed to in the 1987 Agreement are not the same as the "processing allowance" governed by Federal regulation, and to hold otherwise would render this independent contractual right "meaningless." Id. at 17. Harken does not challenge the Federal regulations, but contends that the prior notice requirement and deduction limitation are not applicable to its valuation of natural gas produced under the 1987 Agreement.

[1] The Indian oil and gas lease regulations have been modified since the appeal, and the regulation applicable at the time, 30 C.F.R. § 202.151(a) (1994) (now 30 C.F.R. § 202.151(a)(1) (1998)) required MMS authorization for deducting a processing allowance for the reasonable, actual costs of processing the gas. This allowance was to be "determined in accordance with subpart D of 30 C.F.R. part 206 [(1994) (now 30 C.F.R. Part 206, Subpart E (1998)]." 30 C.F.R. § 202.151(a) (1994). The applicable regulation in that subpart, 30 C.F.R. § 206.158(c)(2) (1994), provided generally that, in valuing gas plant products for royalty computation purposes, the "processing allowance deduction * * * shall not exceed 66-2/3 percent of the value of each gas plant product." The regulations, however, permitted a lessee to exceed the two-thirds allowance in certain circumstances:

Upon request of a lessee, MMS may approve a processing allowance in excess of the limitation prescribed by paragraph (c)(2) of [30 C.F.R. § 206.158 (1994)]. The lessee must demonstrate that the processing costs incurred in excess of the limitation * * * were reasonable, actual, and necessary. An application for exception shall contain all relevant and supporting documentation for MMS to make a determination.

30 C.F.R. § 206.158(c)(3) (1994). The requisite application is "Request to Exceed Regulatory Allowance Limitation" (Form MMS-4393).

It is undisputed that Harken failed to apply for an exception by submitting Form MMS-4393, and obtain prior MMS approval for deducting processing costs in excess of the two-thirds limitation when determining the value of the NGLP's for royalty computation purposes.

Similarly, during the time period pertinent to this decision, 30 C.F.R. § 206.159(a)(1)(i) (1994) provided that, when there was an arm's-length gas processing contract, MMS was to ensure, by "monitoring, review, audit, and adjustment," that the processing allowance encompassed the "reasonable actual costs" incurred by the lessee, requiring: "Before any deduction may be taken, the lessee must submit a completed page one of Form MMS-4109, Gas Processing Allowance Summary Report, in accordance with paragraph (c)(1) of [30 C.F.R. § 206.159 (1994)]." 6/ Thus, a lessee was

6/ MMS asserts, on appeal, the importance of the advance notification requirement of 30 C.F.R. § 206.159(a)(1)(i) and (c)(1)(i) (1994):

"Clearly, under the applicable regulations, MMS has the responsibility to monitor, review, audit, and adjust any processing allowances taken by a lessee to ensure that it is based only on 'actual,' as well as reasonable, processing costs. The agency's ability to perform these duties rest[s], in part, on the lessee's filing a Form MMS-4109 before taking those deductions."

(Answer, IBLA 97-584, at 5 (citing 53 Fed. Reg. 1229, 1269 (Jan. 15, 1988)).)

required to submit the form "prior to the time, or at the same time as, the processing allowance determined pursuant to an arm's-length contract is reported on Form MMS-2014, Report of Sales and Royalty Remittance." ^{7/} 30 C.F.R. § 206.159(c)(1) (1994). Further, 30 C.F.R. § 206.159(d)(1) (1994) provided that, when a lessee took the processing allowance without submitting Form MMS-4109, the lessee was required to "repay" the amount of royalty attributable to the allowance, since it had otherwise been effectively disallowed by the regulation. See 53 Fed. Reg. at 1264, 1270.

It is also undisputed that, during the period from January through March 1992, Harken failed to notify MMS that it intended to take a processing allowance when valuing NGLP's derived from processing the natural gas produced from the Indian lands for royalty computation, by submitting Form MMS-4109, prior to or when paying royalty.

The processing allowance is generally limited to two-thirds the value of NGLP's by 30 C.F.R. § 206.158(c)(2) and (3) (1994). However the regulation also authorizes deductions in excess of two-thirds with prior MMS approval. In addition, 30 C.F.R. § 206.159(a)(1)(i) and (c)(1)(i) (1994) require submittal of Form MMS-4109 when a lessee intends to take a processing allowance. Thus, we find nothing ambiguous in what is required of an Indian lessee.

Harken contends that it is not subject to the regulations and need not file a Form MMS-4109 because the conflicting provisions of its 1987 Agreement govern the royalty valuation of natural gas produced under the agreement. ^{8/} It asserts that the application of the 1987 Agreement

^{7/} The regulations generally required submission of the Form MMS-4109 before taking a processing allowance. They also authorize subsequent filing and taking the allowance for a period "not more than 3 months" prior to the first day of the month in which the filing was made, "unless MMS approves a longer period upon a showing of good cause by the lessee." 30 C.F.R. § 206.159(a)(1)(i) (1994).

The allowances at issue were taken for a period more than three months prior to MMS' September 1993 bill (January through March 1992). This does not preclude Harken from seeking a retroactive allowance of its processing costs for the time period at issue here, based upon a good cause showing (e.g., a good faith belief that it was not required to submit a Form MMS-4109). We note that the MMS decision indicates that no request for a retroactive increase has been filed or adjudicated by MMS.

^{8/} Thus, Harken contends that it is not subject at all to the limitation on the processing allowance, set forth in 30 C.F.R. § 206.158(c)(2) (1994), in valuing production from Indian lands pursuant to the 1987 Agreement. It, thus, also asserts that it is, accordingly, not required to obtain prior MMS approval to exceed the two-thirds processing allowance limitation, by submitting a request pursuant to 30 C.F.R. § 206.158(c)(3) (1994). Harken further argues that it is similarly not subject to the requirement, set forth in 30 C.F.R. § 206.159(a)(1)(i) and (c)(1)(i) (1994), to notify MMS in advance that it is taking a processing allowance with respect to such production.

provisions, rather than the conflicting regulations, is clearly dictated by Federal regulation.

The regulation at 30 C.F.R. § 202.150(b)(3) (1994) (unchanged in 1998) provides that, when the terms of any lease are inconsistent with Subpart D, Part 202, of 30 C.F.R. (1994) (unchanged in 1998) (including the provision of 30 C.F.R. § 202.151(a) (1994)) the processing allowances are to be determined pursuant to 30 C.F.R. Part 206, Subpart D (1994), and the lease terms shall govern to the extent of that inconsistency. Similarly, 30 C.F.R. Part 206, Subpart D (1994) (which includes 30 C.F.R. §§ 206.158(c)(2) and (3) and 206.159(a)(1)(i) and (c)(1)(i) (1994)) provides that, "[i]f the specific provisions of any * * * oil and gas lease * * * are inconsistent with any regulation in this subpart, then the lease * * * shall govern to the extent of that inconsistency." 30 C.F.R. § 206.150(b) (1994) (now 30 C.F.R. § 206.170(b) (1998)).

To the extent of any inconsistency between the 1987 Agreement and the Federal regulations pertaining to product valuation for royalty computation, the agreement controls. 30 C.F.R. §§ 202.150(b)(3) and 206.150(b) (1994); see BHP Minerals International Inc., 139 IBLA 269, 302-11 (1997), aff'd sub nom., The Hopi Tribe v. United States, No. 97-1876-PCT-TSZ (D. Ariz. Feb. 17, 1999), appeal filed, No. 99-16034 (9th Cir.) (Indian coal lease controls royalty valuation, when inconsistent with applicable Federal regulation, pursuant to 30 C.F.R. § 206.250(b) (1989)). Thus, if there is an inconsistency between the agreement and the Federal regulations, it was not necessary for Harken to notify MMS in advance of its intent to take a processing allowance by filing Form MMS-4109 or to seek prior MMS approval to exceed the regulatory limitation, by filing Form MMS-4393 and satisfying the requirements of 30 C.F.R. § 206.158(c)(3) (1994).

Having set this stage we will consider whether there is an inconsistency between the terms of the 1987 Agreement and the Federal regulations applicable to the deductibility of processing costs.

At the outset, we find nothing patently inconsistent between the requirements in 30 C.F.R. § 206.158(c)(2) and (3) (1994) and 30 C.F.R. § 206.159(a)(1)(i) and (c)(1)(i) (1994) that a lessee notify MMS before taking a processing allowance and obtain prior MMS approval to take a processing allowance in excess of the two-thirds limitation and section 15(d) of the 1987 Agreement. The agreement does not state that the operator is permitted to deduct all processing costs without audit to verify the expenses and confirm that they qualify as a deductible processing expense. Nor does the agreement state that the operator is not required to give advance notice to MMS or obtain prior MMS approval if the operator intends to deduct more than two-thirds of the value of the product as a processing allowance. Section 15(d) of the 1987 Agreement, which governs the calculation of the royalty payable to the Tribe, provides that "costs paid by the Operator [Harken and its predecessor-in-interest] to * * * process gas shall first be deducted from gross sales proceeds

prior to Owner's [Tribe's] share of gross proceeds being calculated." (1987 Agreement at 17 (emphasis added).)

On the other hand, section 15(d) of the 1987 Agreement makes no reference "to using the [F]ederal regulations to determine the [permissibility] or extent of deductible processing costs." (SOR, IBLA 97-519, at 8.) Thus, to the extent that section 15(d) of the agreement does not specifically impose the notice/approval requirements of the Federal regulations concerning processing allowances, it may be said to be inconsistent with the express requirements of the regulations. Thus, it might be said that, to the extent that it does not expressly limit the "costs paid * * * to * * * process [the] gas" to two-thirds of the value of the NGLP's (absent prior MMS approval), section 15(d) of the agreement is inconsistent with the provisions of 30 C.F.R. § 206.158(c)(2) and (3) (1994), limiting the applicable processing allowance to two-thirds of the value of the NGLP's, absent prior MMS approval of a higher allowance. It might also be said that, to the extent that it does not expressly require the operator to notify MMS in advance of taking a processing allowance, section 15(d) of the agreement is inconsistent with the requirement of 30 C.F.R. § 206.159(a)(1)(i) and (c)(1)(i) (1994) to provide such notice.

However, we will not construe section 15(d) of the 1987 Agreement in a vacuum. The 1987 Agreement expressly incorporates the requirements of the regulations concerning the calculation and payment of royalty, and Harken is governed by those regulations to the extent that they are not expressly inconsistent with the 1987 Agreement.

The regulations in 30 C.F.R. Part 206, Subpart D (1994), which were promulgated pursuant to the IMDA and other statutes, apply to natural gas production from Indian lands: "This subpart is applicable to all gas production from * * * Indian (Tribal and allotted) oil and gas leases (except leases on the Osage Indian Reservation)." 30 C.F.R. § 206.150(a) (1994) (now 30 C.F.R. § 206.170(a) (1998)); see 53 Fed. Reg. at 1272. The 1987 Agreement is a "lease," as that term is used in this regulation. ^{9/} (Decision, dated June 23, 1997, at 2; MMS Answer, IBLA 97-519, at 1.) A lease issued under 30 C.F.R. Part 206, Subpart D (1994) is defined in 30 C.F.R. § 206.151 (1994) (now 30 C.F.R. § 206.171 (1998)) as "any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, development or extraction of, or removal of lease products." See 53 Fed. Reg. at 1242 ("Th[e] definition must be broad enough to cover any agreement that may be issued or approved by the United States for either

^{9/} This fact is recognized by Harken when it argued that the terms of the 1987 Agreement control to the extent of a conflict with Federal regulations, pursuant to 30 C.F.R. § 206.150(b) (1994). If the Agreement was not a "lease," 30 C.F.R. § 206.150(b) (1994) would not be applicable.

Federal or Indian lands"). The IMDA is a "mineral leasing law," authorizing an Indian tribe, with Secretarial approval, to enter into a "lease or other agreement * * * (hereinafter referred to as a 'Minerals Agreement') providing for the exploration for, or extraction, processing, or other development of * * * gas * * * in which such Indian tribe owns a beneficial or restricted interest." 25 U.S.C. § 2102(a) (1994); see *State of Utah v. Babbitt*, 53 F.3d 1145, 1148–50 (10th Cir. 1995) (minerals agreement under IMDA constitutes lease, within the meaning of a Federal statute allocating part of production royalty derived from "tribal leases" to the state).

The term "lessee," under 30 C.F.R. Part 206, Subpart D (1994), encompasses "an operator or payor who has no interest in the lease but who has assumed the royalty payment responsibility." 30 C.F.R. § 206.151 (1994) (now 30 C.F.R. § 206.171 (1998)). Thus, although Harken is correct that, strictly speaking, it is not a lessee because it does not hold an interest in the natural gas (SOR, IBLA 97–519, at 3), there is no question that Harken is responsible for calculating and paying royalty to the Tribe, following the production and sale of that gas. It is therefore bound by the royalty product valuation requirements of 30 C.F.R. Part 206, Subpart D (1994). (1987 Agreement at 17 ("The Operator shall pay to the Owner * * * the appropriate portion of the proceeds from the sale of production from the land").)

The MMS regulations in 30 C.F.R. Part 206, Subpart D (1994) include 30 C.F.R. § 206.158(c)(2) and (3) (1994) and 30 C.F.R. § 206.159(a)(1)(i) and (c)(1)(i) (1994) apply to the calculation and payment of royalty on natural gas produced from Indian lands, including the gas subject to the 1987 Agreement.

Section 45 of the 1987 Agreement states that Harken and its predecessor-in-interest "agree[] to be supervised and monitored by the United States Bureau of Land Management (BLM) and any other agency of the Department of Interior as set forth in Title 30 and Title 25 of the Code of Federal Regulations and any other applicable law or regulation." (1987 Agreement at 39 (emphasis added).) This section contains no statement that the regulations Harken was to abide by would be only those in effect when the 1987 Agreement was executed. A reasonable reading of this section is that the parties intended that the regulations applicable to supervision and monitoring would be applicable, whether in effect at the time of the Agreement or subsequently adopted, including the royalty product valuation regulations set out at 30 C.F.R. § 206.158(c)(2) and (3) (1994) and 30 C.F.R. § 206.159(a)(1)(i) and (c)(1)(i) (1994).

The language used in the 1987 Agreement is sufficiently broad to encompass language intended to ensure that royalty was properly calculated and paid, and these regulations were applicable to any natural gas production from Indian lands. The regulations at 30 C.F.R. § 206.158(c)(2) and (3) (1994) and 30 C.F.R. § 206.159(a)(1)(i) and (c)(1)(i) (1994) call for providing notice to and obtaining approval from MMS, thus invoking the supervision and monitoring responsibility of MMS. The responsibility for

supervising and monitoring royalty computation for natural gas produced from the Indian lands falls upon MMS, an agency of the Department of Interior.

Section 15(d) of the 1987 Agreement permits deduction of the costs of processing the NGLP's when computing royalties. The relevant provisions of the regulations provide that the deduction is limited to no more than two-thirds of the value of the product sold unless and until Harken gains MMS permission to deduct more. We find no inconsistency between the language in section 15(d) and the reference to the regulations by section 45, and give effect to both section 15(d) and section 45 of the agreement. ^{10/} This accords with well-settled principles of contract interpretation, advanced by Harken. "[C]ontracts are to be construed as a whole, that all clauses and provisions in a contract are to be taken together so as to give effect to every part of the contract, if reasonably possible, and that interpretations that would render a term or provision meaningless are to be avoided." (SOR, IBLA 97-519, at 6-7 (citations omitted).) We have previously applied these principles when interpreting Indian contracts, and apply them again in this case. Benson-Montin-Greer Drilling Corp., 146 IBLA 387, 398 (1998); BHP Minerals International Inc., 139 IBLA at 305-06; SOR, IBLA 97-584, at 15-16 (citing Koniag Inc., 135 IBLA 41, 47 (1996), Home-Stake Royalty Corp., 130 IBLA 36, 38 (1994), and ASARCO Inc., 116 IBLA 120, 126-27 (1990)).

Harken argues that the IMDA, which provides the statutory authority for the 1987 Agreement, does not dictate the adoption of the Federal royalty product valuation regulations in 30 C.F.R. Part 206, Subpart D (1994), including §§ 206.158 and 206.159 (1994)). (SOR, IBLA 97-584, at 5, 12, 22.) It asserts that the IMDA permits the parties to negotiate their own terms regarding deductibility, which occurred in the present case. Id.

Section 8 of the IMDA, 25 U.S.C. § 2107 (1994), authorizes the Secretary of the Interior to promulgate implementing regulations. The regulation at 25 C.F.R. § 225.6 (1998) provides that, "unless specifically stated otherwise" the MMS regulations "found in 30 C.F.R. chapter II, subchapters A and C[.] * * * apply to all minerals agreements approved under this part." (Emphasis added.) This regulation is applicable to minerals agreements approved prior to the effective date of the implementing regulations (April 29, 1994), to the extent that the regulations address royalty valuation. 25 C.F.R. § 225.1(b) and (c) (1998); 59 Fed. Reg. 14959, 14964 (Mar. 30, 1994). The MMS regulations referred to in 25 C.F.R. § 225.6 (1998) include 30 C.F.R. § 206.158(c)(2) and (3) (1994)

^{10/} Having found that section 45 of the 1987 Agreement incorporates the applicable royalty product valuation regulations, it follows that Harken should pay the royalty accruing on the amount improperly deducted pending MMS adjudication of any application for a retroactive allowance that may be filed. (SOR, IBLA 97-584, at 29-30.)

and 30 C.F.R. § 206.159(a)(1)(i) and (c)(1)(i) (1994). Those regulations are a part of Chapter II, Subchapter A (1994). Therefore the MMS regulations at 30 C.F.R. § 206.158(c)(2) and (3) (1994) and 30 C.F.R. § 206.159(a)(1)(i) and (c)(1)(i) (1994) govern royalty computation under the 1987 Agreement.

The Deputy Commissioner of Indian Affairs properly held that the deduction of processing costs from gross proceeds on the sale of NGLP's, for royalty computation purposes, was limited to two-thirds of the value of the NGLP's, as required by 30 C.F.R. § 206.158(c)(2) and (3) (1994), unless and until Harken gained MMS approval for deducting an amount in excess of two-thirds of the value of the NGLP's.

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 January 24, and June 23, 1997, Deputy Commissioner of Indian Affairs decisions are affirmed.

R.W. Mullen
Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge

