ST. JOE MINERALS CORPORATION

IBLA 74-143 Decided May 19, 1975

Appeal from a decision of the Director, Geological Survey, requiring payment of royalty for silver recovered under acquired lands mineral lease BLM-A 049307 (Mo.), at a rate similar to that paid by other lessees in the area.

Set aside and remanded.

1. Contracts: Construction and Operation: General Rules of Construction -- Mineral Leasing Act for Acquired Lands: Generally

Government mineral leases are subject to the same rules of construction as those applied in interpreting a contract between two private parties.

2. Contracts: Construction and Operation: General Rules of Construction -- Mineral Leasing Act for Acquired Lands: Generally

While a general rule of contract construction provides that when two provisions of a lease conflict, and one is a printed form while the other is a typed or written addendum, the latter provision will be given force and effect over the former, this rule is only relevant where the two provisions cannot be reconciled.

3. Contracts: Construction and Operation: General Rules of Construction -- Mineral Leasing Act for Acquired Lands: Generally

The addition to a standard lease clause, reserving to the Secretary the right to

> establish reasonable minimum values for minerals mined, of an insertion which spells out how the gross value is to be set does not deprive the Secretary of the reserved right where the application of the added provisions would deprive the United States of any payment for a recoverable associated mineral.

APPEARANCES: L. W. Casteel, Division Manager, St. Joe Minerals Corp., and W. Oliver Rasch, Esq., General Attorney, St. Joe Minerals Corp., for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

St. Joe Minerals Corporation (hereinafter referred to as "St. Joe") is lessee under acquired lands mineral lease BLM-A 049307 (Mo.), granted June 1, 1963, for a period of ten years with right to successive renewals of like periods, 1/ for copper, lead, iron, zinc and associated minerals.

Prior to May 21, 1971, St. Joe shipped concentrates from ore removed from the subject leasehold to the American Zinc Company Smelter in East St. Louis, Illinois. St. Joe computed its royalty payments under the lease on the basis of the price received from the smelter for the concentrates. Attrition in available zinc smelting facilities through a phasing out of various domestic operations, culminating in the closing of the American Zinc smelter, compelled a change in the marketing of concentrates produced from the lease. St. Joe was forced to ship its concentrate to its own smelter in Josephtown, Pennsylvania. 2/ By letter of June 1, 1971, St. Joe requested approval by the Regional Mining Supervisor of its contract with Texas Gulf Sulphur for purchase of zinc concentrates shipped to the Josephtown smelter as a basis for determination of the royalty due to the United States for zinc ores produced from federally-owned lands under the subject lease. St. Joe asserted that the Texas Gulf Sulphur contract was the most favorable contract

---

1/ An application for a renewal of the lease was timely filed with the Bureau of Land Management.
2/ The American Zinc smelter utilized a "horizontal retort" method of smelting which permitted a good recovery of silver in the zinc concentrate. The Josephtown smelter, on the other hand, employs a pyrometallurgical method of smelting that is not equipped to recover the silver contained in the zinc concentrate.

for the purchase of zinc concentrate at the Josephtown smelter. Texas Gulf Sulphur, through a wholly-owned subsidiary produces zinc concentrates from a mine in Kidd Township, Ontario, Canada. However, the contract with Texas Gulf Sulphur provides for payment for the concentrates based only on zinc and cadmium content and does not provide any additional sum for any silver content, although the contract estimated the concentrates would contain some silver. By letter of July 8, 1971, St. Joe proposed to the Regional Mining Supervisor, Geological Survey, that it would thereafter make payment for silver in the zinc concentrate on the basis of 20% of the silver content at the Handy & Harman price for refined silver, less 10 cents per ounce.

The Supervisor refused this proposal and thereafter, in his decision of February 25, 1972, relying on the overriding authority of the Secretary to establish reasonable minimum values for the minerals produced from the lease, as set forth in section 2(c), stated:

> * * * [w]ith regard to the principles of conservation and protection of the interests of the United States, it is requested that St. Joe alter or amend the Texas Gulf Sulphur contract, or make other provisions, to allow for silver payments as of May 21, 1971, as follows: "Pay for seventy-five percent (75%) of the silver content at the Handy & Harman New York quotation for refined silver, adjusted to the basis applicable to silver contained in unrefined silver bearing material, as published by the E. & M. J. metal and mineral market for the quotational period. Nothing shall be paid for silver if less than one (1) troy ounce per ton."

St. Joe appealed from this order to the Director, Geological Survey, who, by decision of October 18, 1973, affirmed the determination of the Regional Mining Supervisor that a royalty payment similar to that paid by other lessees in the area for silver is not unreasonable, but held that the Supervisor was in error in requesting St. Joe to alter or amend its contract with Texas Gulf Sulphur.

From that decision St. Joe has appealed to this Board, contending essentially that it has paid royalties in accordance with the express provisions of the lease as set forth in section 2(c), and that nothing in the record supports the allegation that St. Joe has made, or is making, payments for silver that are dissimilar to the payments made by other lessees in the area. 3/

Despite the offer St. Joe made earlier, its position now is that under the lease terms it is not obligated to make any payment for the silver contained in the concentrate, as none is recovered. It says, correctly, that its offer was made in settlement, and having been refused, is no longer binding upon it.

It is a well established proposition that the Secretary of the Interior has the authority to establish reasonable minimum values for minerals mined under a lease contract. See 30 U.S.C. § 359 (1970); 30 CFR 231.61. See also United States v. Southwest Potash Corp., 352 F.2d 113 (10th Cir. 1965). Form 4-1100 (September 1962), utilized as the lease in the instant case, declares in sec. 2(c) that the lessee is required:

> To pay the Lessor within 30 days after the end of each period prescribed in subsection (f) of this section a royalty of * percent of the gross value of the minerals mined hereunder at the point of shipment to market, such point of shipment to be the mine or preparation plant, as the case may be. The Lessee agrees that the Secretary of the Interior, for the purpose of determining the royalties due hereunder, may establish reasonable minimum values for the minerals mined, due consideration being given to the highest price paid for a part or a majority of the production of minerals of like quality produced from the same general area, the price received by the Lessee, posted prices, and other relevant matters.

* See attached royalty schedule.

3/ In a subsequent submission to this Board, received April 11, 1974, the Director, Geological Survey, provided us with information that showed that recent changes in the marketing situation of the other lessees had resulted in a lowering of their payments for silver. The District Mining Engineer concluded, in a memorandum dated February 13, 1974, that "[t]he Area Supervisor turned down St. Joe's offer to pay royalty on silver based on what they received from the residue and now it seems that other lessees will pay royalty on similar terms." Regardless of any effect these facts might have on the present acceptability of St. Joe's offer, it does not moot the question of the proper payment to be made in the period following the closing of American Zinc's smelter up to the time of the change in the royalty payments of other lessees in the area.

In his decision, the Acting Director, Geological Survey, emphasized particularly the phrase "due consideration being given to the highest price paid for a part or a majority of the production of minerals of like quality produced from the same general area." The Regional Mining Supervisor had stated that other lessees had paid the Government more royalty on silver than St. Joe was offering. Thus, the Acting Director declared that "[i]t is believed that all lessees should pay the same royalties on government minerals mined in the same general area * * *."

Appellant objects to this reasoning on the grounds that while the printed lease form would allow the appropriate official of the Geological Survey to make the decision rendered in this case, provisions added by agreement of both parties to the contract provide a different mechanism for the determination of the proper royalty. Thus, appended to sec. 2(c) were provisions stating inter alia, that:

> For the purposes of this lease, the gross value of the minerals mined hereunder at the point of shipment to market (hereinafter called the "Gross Value") shall, in the discretion of the Secretary of the Interior, be either of the following prices less transportation charges in effect at time of shipment from the place or origin of the concentrates referred to below to the smelter:
>
> (i) the highest price, if any, paid or offered the lessee for all or any part of the concentrates produced from ore mined under this lease, or
>
> (ii) the highest price the lessee would pay for concentrates of substantially similar quality, if such price were determined by contracts then in effect between the lessee and any of its suppliers of concentrates, other than suppliers affiliated with the lessee;
>
> If (i) and (ii) are inapplicable in the determination of Gross Value, such value shall be determined by the average posted New York metal price as quoted by the "E. & M. J. Metal and Mineral Markets" for the period prescribed in subsection (f) of Section 2 of this lease less an allowance for average freight and Federal taxes thereon from the treating smelter to to Atlantic Seaboard destinations to which metal is

> customarily shipped by lessee and less all of the lessee's costs and charges during such period in connection with lessee's shipping, smelting, refining, handling and selling of all concentrates (other than those produced by lessee) and of all metal produced therefrom.

The net effect of these additions, appellant contends, was that gross value could be determined either (1) by the price it received from smelters for the concentrates obtained from the ore mined, or (2) by the price that it would pay for such concentrates in an arms length arrangement with a third party. If neither of these two avenues were available, e.g., the lessee smelted his own ore and had no other business dealings with independent third parties, the New York metal price would be controlling.

[1, 2] We find ourselves unable to agree with appellant. It is well settled that leases and contracts entered into between the Government and a private party are subject to the same rules of construction as those applied in interpretation of contracts between two private parties. Reading Steel Casing Co. v. United States, 268 U.S. 186, 188 (1925); Marathon Oil Co., 16 IBLA 298 (1974); Superior Oil Co., 12 IBLA 212 (1973); Amoco Production Co., 10 IBLA 215 (1973). Another principle of construction, and one which appellant strongly advances, is that when two provisions of a contract conflict, and one is part of a printed form and the other a typed or written addendum the latter provision will be given force and effect over the former. Fireman's Fund Ins. Co. v. McDaniel, 187 F. Supp. 614 (D. Miss. 1960); Corbin on Contracts § 548 (1960 ed.). This is merely a recognition that a provision written in or added to a form contract is the product of mutual agreement and discussion and is therefore more likely to indicate the true intentions of the parties signatory to the contract than would a provision which appears on a general form and is not the subject of considered negotiations.

Application of this latter principle of contract construction is, of course, limited to situations in which two provisions of a contract are irreconcilable, since it is elementary contract law that courts should attempt to give force and effect to all provisions appearing in a contract. Lacvin v. St. Vincent DePaul Society, 323 Mich. 607, 36 N.W.2d 163 (1949).

The issue presented by this appeal can be succinctly capsulized as follows: Is the printed portion of sec. 2(c), set out above, declaratory of a residual right vested in the Secretary which is operative even within the formula appended to the contract?

While we agree with the appellant that the two provisions are not neatly complementary, we do not believe it is proper to draw the conclusion that the written portion served to divest the Secretary of his discretion to set a minimum value for the purpose of determination of royalty owed to the United States. Indeed, had such a result been the intent of the contracting parties, they would have certainly taken care to indicate, on the contract, the nonapplicability of the printed provisions. The fact that they did not delete the reference is an indication that while the parties agreed to a certain formula to be used in ordinary circumstances, they nevertheless realized that the Secretary of the Interior would retain his ultimate right to set minimum royalty value.

[3] The addition to a standard lease clause, reserving to the Secretary the right to establish reasonable minimum values for minerals mined, of an insertion which spells out how the gross value is to be set does not deprive the Secretary of the reserved right where the application of the added provisions would deprive the United States of any payment for a recoverable associated mineral.

Furthermore, it has not been shown that the contract between St. Joe and Texas Gulf Sulphur involves "like concentrate." Indeed, the record tends to indicate that the concentrates are not similar.

While the Texas Gulf Sulphur contract states that the concentrates subject thereto are estimated to assay 1-3 ounces of silver per ton, the concentrates from the mine on the leased lands herein have a much higher silver content.

In any event, the record does not show that the Geological Survey ever set a value on the concentrate from which royalty could be computed or that the Survey ever made demand for payment of a specified sum for royalty. Accordingly, the cases will be remanded for such determinations. 4/

4/ On June 17, 1974, this Board issued an order to the Geological Survey requesting it to supply this Board with documents supportive of its contention that other lessees in the area were paying more than the St. Joe offer entailed. Appellant opposed this request on the grounds that the material was confidential, 30 CFR 231.5, and thus could not be the basis for decision under 43 CFR 4.24(a)(4), and also that the information was not relevant to the determination of the appeal. In light of our disposition of the case it is unnecessary to discuss these issues.

Appellant has requested oral argument. In view of our disposition of the case, oral argument would serve no useful purpose and is therefore denied.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case files are remanded for further action not inconsistent with this opinion.

Douglas E. Henriques
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Frederick Fishman
Administrative Judge