

KNIFE RIVER COAL MINING CO.

IBLA 79-128

Decided September 24, 1979

Appeal from decision, GS-10-Mining, of the Acting Director, U.S. Geological Survey, establishing the basis for computing the royalty on production from Federal coal lease BLM (ND) 019127.

Affirmed.

1. Coal Leases and Permits: Royalties

In determining the amount of royalty due to the United States under a Federal coal lease, it is proper for U.S. Geological Survey to include the amount of the reclamation fee imposed by the Surface Mining Control and Reclamation Act as part of the gross value of production where the selling price received at the point of shipment to market is increased by that amount.

APPEARANCES: Joseph R. Maichel, Esq., Bismark, North Dakota, representing Knife River Coal Mining Company.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

On October 7, 1977, Knife River Coal Mining Company requested an opinion from the U.S. Geological Survey (GS) as to whether the reclamation fee required by the Surface Mining Control and Reclamation Act ^{1/} should be considered a part of the gross value of coal for computing the royalty under Federal coal lease BLM (ND) 019127.

On December 6, 1977, the Area Mining Supervisor responded by a letter-decision. The decision compared the reclamation fee to a state severance tax which GS has earlier determined must be included in the value basis, which determination had been affirmed by this Board in Knife River Coal Mining Company, 29 IBLA 26 (1977). The Area Supervisor accordingly held that royalty should be paid based on a value which included the reclamation fee. Knife River then appealed to the Director, GS.

^{1/} On August 3, 1977, Congress enacted the Surface Mining Control and Reclamation Act of 1977, P.L. 95-87, 91 Stat. 447 (codified at 30 U.S.C. § 1201 (Supp. I 1977)). Section 402 of the Act requires all operators of coal mining operations subject to the provisions of the Act to contribute to a reclamation fund. Specifically, section 402(a) provides:

"(a) All operators of coal mining operations subject to the provisions of this chapter shall pay to the Secretary of the Interior, for deposit in the fund, a reclamation fee of 35 cents per ton of coal produced by surface coal mining and 15 cents per ton of coal produced by underground mining or 10 per centum of the value of the coal at the mine, as determined by the Secretary, whichever is less, except that the reclamation fee for lignite coal shall be at a rate of 2 per centum of the value of the coal at the mine, or 10 cents per ton, whichever is less."

30 U.S.C. § 1232(a) (Supp. I 1977).

On November 1, 1978, the Acting Director, GS, affirmed the decision of the Area Mining Supervisor. After reviewing the GS rationale as to inclusion of the severance tax, 2/ he concluded:

The reasoning supporting the inclusion of the severance tax in the royalty base is equally applicable here. The fact that the IBLA decision involved a state tax rather than a federally imposed fee is a distinction which does not call for the application of different legal principles.

Nothing in this decision is meant to indicate that the surface mining reclamation fee is a tax. We decide only that the economic effect of increasing the selling price by the amount of the fee is no different from the effect of an increase attributable to a tax or other cost of operation.

The lessee's appeal to the Director, U.S. Geological Survey, is hereby denied.

Knife River appeals from this decision.

2/ The GS analysis as quoted in Knife River Coal Mining Company, supra at 28, is as follows:

"If the force in the market place determine that the value of the leasehold production at the point of shipment is no more than the 'selling price' prior to the imposition of the severance tax, the producer absorbs the severance tax in the same way that he absorbs all other increases in his operating costs.

"When the producer absorbs the tax, the Federal lessee continues to compute the royalty due the United States on a basis that is not less than the 'selling price' in effect prior to the imposition of the severance tax.

"Should the forces in the market place demonstrate that the value of the leasehold production at the point of shipment is actually more than the 'selling price' prior to the imposition of the severance tax the purchaser may recognize that higher value by absorbing part or all of the severance tax in the form of an increased payment, i.e. an increase in the 'selling price' for the production from the leasehold.

"When the purchaser recognizes by an increase in the 'selling price' the higher value of the leasehold production, the lessee is required to compute the royalty due the United States on the basis of that higher value, i.e. a Federal lessee must compute the royalty due the United States on a basis which is not less than the increase in the 'selling price.'"

The only issue for consideration is whether the reclamation fee should be included in the gross value for purposes of computing the royalty due to the United States on a Federal coal lease. The pertinent part of the royalty clause of the lease reads as follows:

(2d) Royalty. To pay the lessor a royalty of 5 percent of the gross value of the coal 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, but in no event will the royalty be less than 15 cents on every ton of 2,000 pounds of coal mined for the first 10 years and not less than 17 1/2 cents on every ton of 2,000 pounds of coal mined for the remainder of the second 20-year period of the lease. 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 coal of like quality produced from the same general area, the price received by the lessee, posted prices, and other relevant matters. Royalties shall be payable quarterly within 30 days from the expiration of the quarter in which the coal is mined.

Appellant argues that the reclamation fee adds nothing to the value of the coal and that, therefore, the addition of the fee to the basis for computing the royalty results in a windfall profit to the United States. Appellant also contends that since the reclamation fee did not exist when its coal lease was executed, the parties to the lease did not contemplate such a fee would be included in the value basis for computing the royalty.

However, appellant has failed to focus properly on the impact of the reclamation fee on the selling price of the coal. As appellant

notes, value for the purpose of royalty computation is generally equated with gross price. See 30 CFR 211.63(b). This is what the parties contemplated and the U.S. Geological Survey decision does not change that relationship. Whether the producer considers the reclamation fee in setting his selling price or not, the royalty is still based on value as determined by that selling price. If the producer recovers the amount of the fee from the purchaser, the purchaser has, in effect paid additional consideration for the coal, increasing the price to him, and thus the value for computing the royalty must also increase by that amount. While appellant phrases the question as whether the reclamation fee should be included in the gross value for purposes of computing royalty, the real question posed by appellant is whether the reclamation fee should be subtracted from the gross value which appellant obtains. Thus, if after imposition of the reclamation fee appellant continues to sell the coal at the previous price, there is no increase in the royalty paid to the United States. If, on the other hand, appellant passes along the reclamation fee to its customers, either through an increase in the selling price, or by a direct rebate of the reclamation fee, the United States is properly compensated for the increased value received. By attempting to diminish the price which is actually received by the amount of the reclamation fee, appellant is attempting to diminish what is clearly the gross value received by subtracting what is properly part of the cost of production.

We agree that the rationale of Knife River Coal Mining Company, supra, applies in this case and hold that GS correctly concluded that the reclamation fee becomes a part of the gross value of the coal for royalty computation when the selling price is increased by the amount of the fee.

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 affirmed.

James L. Burski
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Newton Frishberg
Chief Administrative Judge

