

BLACKHAWK COAL COMPANY (ON RECONSIDERATION)

IBLA 85-732

92 IBLA 365, 93 I.D. 285

Decided November 5, 1986

Request for clarification of Blackhawk Coal Company (On Reconsideration), 92 IBLA 365, 93 I.D. 285 (1986).

Request granted; prior decision amended.

1. Accounts: Generally--Mineral Leasing Act: Royalties-- Rules of Practice: Appeals: Generally

When Congress amended 30 U.S.C. § 191 (Supp. III 1985), it included means to protect the royalty beneficiaries from loss due to delay in the collection of the disputed amount. An order to pay the disputed royalty may not be suspended under 30 CFR 243.2 unless the lessee submits a bond "deemed adequate to indemnify the lessor from loss or damage." A bond will not be deemed adequate unless it includes the amount of interest that the disputed royalty would earn during the pendency of the dispute.

APPEARANCES: Hugh C. Garner, Esq., Salt Lake City, Utah, for appellant; Peter J. Schaumberg, Esq., Geoffrey Heath, Esq., Howard W. Chalker, Esq., Office of the Solicitor, Washington, D.C., for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

On May 7, 1985, the Director, Minerals Management Service (MMS), denied a request by Blackhawk Coal Company (Blackhawk) that a demand letter for payment of royalty with respect to coal leases U-058184 and SL-029093-046653 be suspended pending appeal. Blackhawk had offered to post bond in lieu of payment pending a final determination of the issues on appeal. Under threat of punitive action by MMS for failure to make the demanded payment, Blackhawk paid the disputed amount to MMS while it appealed the Director's May 7, 1985, decision to this Board. By order dated February 25, 1986, this Board reversed the Director's decision, and in a later decision, Blackhawk Coal Company (On Reconsideration), 92 IBLA 365, 93 I.D. 285 (1986), we ordered MMS to "immediately refund \$4,639,939.95 conditioned upon Blackhawk's posting of bond in such amount, pending resolution of all issues presently on appeal before the Director."

Blackhawk subsequently submitted a bond for the stated amount, but by letter dated September 10, 1986, James R. Detlefs, Chief, Fiscal Accounting Division, Royalty Management Program, MMS, held that the bond "should be increased from \$4,639,939.95 to \$5,076,846.65, which will include interest of \$ 436,906.70 through July 1, 1987." The letter also determined the bond to be deficient because the corporate seal was not affixed. MMS now agrees, however, that Blackhawk's seal does not need to be on the bond. Blackhawk correctly states it has done everything required by the Board's decision. Blackhawk accordingly requests the Board to clarify our prior decision to indicate that the bond was not to include the interest changes and find that MMS must comply with our direction to immediately refund the \$4,639,939.95 amount to Blackhawk. 1/

MMS contends that this \$4,639,939.95 amount is no longer "adequate to indemnify the lessor from loss or damage," a necessary prerequisite for suspension of the demand payment under 30 CFR 243.2. Thus, MMS has asked this Board to modify its order to require a refund only if Blackhawk submits an additional bond sufficient to cover accrued and future interest as set forth in the September 10 letter, and to order that Blackhawk periodically be required to supplement the bond.

This is the third time this Board's attention has been directed to this matter, and appellant has yet to receive the refund required by the order we issued 8 months ago. On February 25, we issued this Department's final determination that the Director's denial of a suspension was improper. The Director's duty to refund that money became executory upon issuance of this order. MMS did not see fit to file a petition for reconsideration of our order until after Blackhawk filed its request. MMS then disclosed that it had distributed the disputed royalties to the State of Utah and the U.S. Treasury rather than placing the disputed sums in a suspense account as authorized by 30 U.S.C. § 191 (Supp. III 1985).

In Blackhawk Coal Company (On Reconsideration), *supra*, we ordered MMS to immediately refund appellant's money conditioned upon the posting of a bond by Blackhawk in such amount. Appellant submitted a satisfactory bond on July 25. If MMS believed it could not immediately issue a refund upon the date that appellant submitted the bond, MMS should have immediately petitioned the Board for reconsideration of its decision so that our order could have been amended to meet the needs of the agency. Even though 5 months had elapsed since the issuance of our first order in this case, such a petition would still have satisfied the prompt filing requirement set for petitions for reconsideration by 43 CFR 4.21(c) because less than

---

1/ On Oct. 27, 1986, the Board received a copy of a letter from counsel for Blackhawk to MMS, dated Oct. 23, 1986, furnishing MMS "bond No. 5176608 dated October 7, 1986, in the specified amount of \$436,906.70." Counsel further stated: "This bond is posted under protest." On Nov. 4, 1986, counsel filed a further response to the arguments advanced by MMS, asking the Board "to direct MMS to retract its decision to post the interest bond," contending the dispute over the interest payment remains very much alive.

a month had elapsed since the issuance of our July 1 order. Instead, MMS waited over a month and then told appellant a larger bond was required before a refund could be issued. On September 19, 1986, appellant filed its request for clarification of this matter, bringing MMS' inaction to the attention of this Board for the first time. It was not until MMS filed its response on September 30 that the need for an additional bond to cover accruing interest was ever raised. Because the parties do not agree concerning their respective obligations following issuance of the Board's last decision in this matter, appellant's request for clarification of that decision is granted.

[1] Pursuant to 30 U.S.C. § 191 (Supp. III 1985) of the Mineral Leasing Act, a certain percentage of the rents and royalties received from a mineral lease will be distributed to the state in which the lease is located. If the United States did not collect royalty pending resolution of a dispute, however, a state would suffer a delay in the payment to which it was otherwise entitled. There previously was no provision for a state to receive interest on uncollected amounts. When Congress amended this provision in 1983, 30 U.S.C. § 191 (Supp. III 1985), it included means to protect the royalty beneficiaries from loss due to delay in the collection of the disputed amount. In Peabody Coal Co., 93 IBLA 317, 326 n.4, 93 I.D.& n.4 (1986), we stated that the Department has a responsibility to the beneficiaries of this statutory provision to ensure that receipts are not unlawfully diminished, noting that a state's entitlement under this provision gives it standing to seek judicial review of Departmental decisions affecting the amount the state would receive, citing Arkla Exploration Co. v. Watt, 548 F. Supp. 466, 472-73 (W.D. Ark. 1982). Thus, when a lessee is permitted to submit a bond instead of making a cash payment to a suspense account established pursuant to 30 U.S.C. § 191 (Supp. III 1985), the bond cannot be considered adequate unless it includes, in addition to principal, the amount of interest the disputed royalty would earn during the pendency of the dispute.

So far, however, no additional liability for interest has accrued because the principal has already been paid by Blackhawk to MMS and the State's share distributed to it. There has been no showing that the money paid to the State has been recouped by MMS through repayment or other accounting. Additional interest on the entire amount of royalty under dispute cannot begin to accrue until such recoupment has occurred.

MMS has made plain that the period ending July 1, 1987, "is the projected time that a decision will be reached on the merits of this case [by the Director, MMS]." Supplemental Response To Appellant's Request For Clarification Of Order at 1. MMS goes on to explain that

It has been consistent practice of MMS to require bonds sufficient to cover interest which will accrue to some reasonable date in the future. Otherwise, as interest accrues, the lessee would have to supplement its bond each month, which is both expensive and administratively burdensome.

Id. at 1-2. Accordingly, the Board concludes that the inclusion of interest in the bond to be furnished by Blackhawk is proper.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the order at the conclusion of our prior decision is amended to require MMS to immediately refund \$4,639,939.95, conditioned upon Blackhawk's posting a bond in such amount plus an additional bond to cover estimated accrued interest to July 1, 1987. 2/

Franklin D. Arness  
Administrative Judge

I concur:

Wm. Philip Horton  
Chief Administrative Judge

---

2/ It is noted that this Board's Aug. 22, 1985, order in Blackhawk Coal Co., IBLA 85-732, directed that an appropriate bond should include "any additional amounts which may accrue while Blackhawk's appeal to the Director, MMS, is pending." Id. at 2.

ADMINISTRATIVE JUDGE MULLEN CONCURRING IN THE RESULTS:

I agree with the majority determination that the amount paid under protest should be refunded upon posting a bond for that amount plus interest accrued. While I questioned the authority to demand a bond for yet to be accrued interest, rather than allowing appellant the opportunity to make payment of accrued interest monthly or increasing the bond periodically to cover accrued interest, this concern was mooted when appellant submitted an additional bond to cover interest through July 1, 1987.

R. W. Mullen  
Administrative Judge

