

TRIGG DRILLING CO., INC.

IBLA 90-377

Decided January 7, 1992

Appeal from a decision of the Director, Minerals Management Service, requiring payment of additional royalties on ad valorem tax reimbursements for natural gas produced from Federal leases in the State of Wyoming. MMS-89-0013-O&G.

Affirmed.

1. Oil and Gas Leases: Royalties: Generally

Where a lessee has a contractual right to receive reimbursement for ad valorem taxes levied by a state on gas produced and sold under the contract, MMS may properly determine that the value of production to which the royalty rate applies includes the purchase price plus the tax reimbursements, and it may collect additional royalty where royalty payments were made using a value that excluded the tax reimbursements.

APPEARANCES: Hugh V. Schaefer, Esq., and Stephen M. Brainerd, Esq., Denver, Colorado, 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 DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Trigg Drilling Co., Inc. (Trigg), has appealed from a February 5, 1990, decision of the Director, Minerals Management Service (MMS), affirming an order of the MMS Royalty Compliance Division (Compliance Division), dated December 6, 1988, requiring the payment of \$11,459.01 (Invoice No. 22944005) as additional royalties on State of Wyoming ad valorem tax reimbursements for gas produced from Federal oil and gas leases 048-208269-0, 049-027109-A, 049-029262-0, and 049-059505-0, for the period January 1980 through November 1984. 1/

The Compliance Division order was based on an audit of Federal leases conducted by the State of Wyoming Auditor's Office, pursuant to the provisions of section 205 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. § 1735 (1988). The order pointed out that the

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1/ Trigg assigned these leases to Kaiser Energy, Inc., effective Dec. 1, 1984.

State's review disclosed that Trigg's gas purchase contracts for the referenced leases contained a provision requiring the gas purchaser to reimburse Trigg for Wyoming ad valorem taxes; 2/ Trigg had not remitted royalty payments reflecting such tax reimbursements for the referenced leases; and Trigg failed to exercise due diligence in collecting monies owed to it under the tax reimbursement provisions.

Trigg appealed and in his decision dated February 5, 1990, the Director, MMS, affirmed the Compliance Division order holding that "[i]t has been MMS's longstanding position that the gross proceeds including tax reimbursements paid to the lessee represent the minimum value acceptable to the lessor in computing the royalty" (Decision at 4).

On appeal Trigg sets forth a number of arguments in support of its position that MMS may not collect royalty on the tax reimbursements: (1) applicable MMS regulations do not authorize the imposition of royalties on tax reimbursements; (2) the MMS decision is inconsistent with the Natural Gas Policy Act's (NGPA) uniform ceiling price scheme; and (3) the decision in Hoover & Bracken Energies, Inc. v. U.S. Department of the Interior, 723 F.2d 1488 (10th Cir. 1983), cert. denied, 469 U.S. 865 (1984), is not controlling in this case. In addition, it incorporates by reference all those arguments made in its appeal to the Director, MMS.

[1] We find no reason to address these arguments in this opinion because such arguments, or similar ones, have been dealt with at length, either individually or collectively, in a number of Board decisions upholding the principle that tax reimbursements made by the buyer of gas produced from Federal wells to the Federal lessee (seller) are properly included as part of the gross value of the production in computation of the royalty due to the Federal Government. BWAB, Inc., 121 IBLA 188 (1991); 3/ CIG Exploration, Inc., 113 IBLA 99, 104 (1990), appeal pending, CIG Exploration, Inc. v. Lujan, No. 91-CV-0096 (D. Wyo. Apr. 15, 1991); 4/ Enron Corp., 106 IBLA 394, 396 (1989), aff'd, Enron Oil & Gas Co. v. Lujan, No. H-89-1411 (S.D. Tex. Sept. 13, 1991), appeal filed, (5th Cir. Oct. 23, 1991); 5/ Tricentrol

2/ The record does not include copies of the purchase contracts; however, Trigg does not dispute the existence of such provisions.

3/ In BWAB, supra at 195, we also held that a lessee was responsible for paying royalty on all tax reimbursements owed under the production contracts, regardless of whether the lessee ever enforced its contractual rights by actually collecting the reimbursements.

4/ Counsel for Trigg in this case represented the appellant before the Board in CIG Exploration. In that case, the Board considered virtually the same arguments presented in this case; however, that case involved the imposition of additional royalties for reimbursed severance and conservation taxes, as well as for reimbursed ad valorem taxes.

5/ Trigg sought to delay the processing of the present appeal by filing a request for stay based on its contention that the issue in the Enron litigation was the same as that involved in this case and that the Board should stay action on the appeal pending a final non-reviewable decision

United States, Inc., 105 IBLA 392, 394-95 (1988); Amoco Production Co., 29 IBLA 234, 235 (1977); Wheless Drilling Co., 13 IBLA 21, 80 I.D. 599 (1973). See Hoover & Bracken Energies, Inc., 52 IBLA 27, 88 I.D. 7 (1981), aff'd, Hoover & Bracken Energies, Inc. v. U.S. Department of the Interior, supra. 6/

Trigg has provided no argument that convinces us that the conclusions reached in those cases are incorrect.

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.

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Bruce R. Harris  
Deputy Chief Administrative Judge

I concur:

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R. W. Mullen  
Administrative Judge

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fn. 5 (continued)  
in that litigation. By order dated Aug. 2, 1990, the Board denied that request. In Enron Corp., supra at 398-99, we specifically held that valuation of production to include tax reimbursements is not violative of the NGPA.

6/ Trigg attempts to distinguish Hoover & Bracken from this case on its facts. Admittedly, there are factual distinctions between that case and this case; however, any such distinctions do not undermine the conclusion therein that the Federal Government is entitled to collect royalty on the value of production which includes reimbursed severance taxes. In subsequent Board decisions, we have held that reimbursed ad valorem taxes must also be considered part of the value of production for purposes of computing royalty. BWAB, Inc., supra; CIG Exploration, Inc., supra.