

HOME-STAKE ROYALTY CORP. (ON RECONSIDERATION)

IBLA 93-298

Decided September 17, 1996

Petition for clarification or reconsideration of Home-Stake Royalty Corp., 130 IBLA 36 (1994).

Home-Stake Royalty Corp., 130 IBLA 36 (1994), affirmed as clarified.

1. Appeals: Generally—Contracts: Construction and Operation: General Rules of Construction—Indians: Mineral Resources: Oil and Gas: Communitization Agreements—Oil and Gas Leases: Communitization Agreements

A decision of the Board of Land Appeals found that production from two oil wells on an Indian lease was not covered by a communitization agreement. An allegation that this decision was retroactively applied to the detriment of the operator does not raise an issue requiring reconsideration; because the wells produced oil, not gas, the communitization agreement, by its own terms, did not apply to such production.

APPEARANCES: Joseph J. McCain, Jr., Esq., and C. Kevin Morrison, Esq., Tulsa, Oklahoma, for Home-Stake Royalty Corporation; Alan R. Woodcock, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Tulsa, Oklahoma, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Home-Stake Royalty Corporation (Home-Stake) has petitioned for clarification or reconsideration of a decision issued on July 12, 1994, in Home-Stake Royalty Corp., 130 IBLA 36 (1994). The decision found that, because two wells drilled on restricted Indian lease No. I-51-IND-55245 were oil producers, the wells were not covered by communitization agreement OK NM 79475, which applied only to wells producing natural gas and associated liquid hydrocarbons. The facts concerning development of the two wells in question, the Susie Nos. 5 and 6, are stated in our prior decision and are not disputed herein.

Asking that we state the effective date of the decision that issued on July 12, 1994, the petition filed by Home-Stake explains that, prior to November 25, 1992, when the Bureau of Land Management (BLM) first decided

the communitization agreement did not apply to the Susie Nos. 5 and 6 wells, Home-Stake paid royalties from production on the wells, believing that Oklahoma law and the communitization agreement governed such payments. Our decision in Home-Stake Royalty Corp., supra at 39, however, found Federal law and Federal lease terms applied to production from both wells, and that the communitization agreement was inapplicable. Because Home-Stake had not foreseen this ruling, royalty payments were made to participants in the communitization agreement who are not otherwise entitled to share in the production. This manner of royalty payment continued from the time oil was first produced from the Susie Nos. 5 and 6 in 1990 until either September 1991 when Home-Stake was notified the communitization agreement did not apply to oil production from the two wells or November 1992 when BLM issued its formal decision (Petition at 3). Home-Stake argues that the effect of our decision is to award unspecified money damages against Home-Stake (Petition at 3). For these reasons, Home-Stake asks that we clarify that our decision was not intended to be in effect prior to issuance.

Citing the communitization agreement, Home-Stake also argues that the agreement itself excuses royalty payment errors such as those described by Home-Stake's petition, provided that they were made in good faith (Petition at 4). Urging that it should not be required to pay royalties twice on oil production from the Susie Nos. 5 and 6 wells, Home-Stake asks that "the Board should clarify its Opinion to make clear that it was not intended to apply retroactively, and that adjusted royalty payments are due only from the date of the first adjudication by BLM that the Communitization Agreement does not apply to these two wells" (Petition at 3).

Counsel for BLM points out, however, that although Home-Stake characterizes the relief now sought as an attempt to avoid giving retroactive effect to our 1994 decision, the time that is of actual concern in this case is a period between first production from the wells in 1990 and notification that oil production was not covered by the communitization agreement. This being the case, it is submitted by BLM that Home-Stake's characterization of our prior decision as though it involved some element of retroactivity is inaccurate.

Construing the terms of the communitization agreement, we found at 130 IBLA 39 that "the oil produced from the Susie No. 5 and No. 6 wells is not a substance communitized under the agreement." This was the principal holding in our decision. Before reaching this conclusion, we considered, but rejected, contentions by Home-Stake that the communitization agreement should be applied to production from the Susie Nos. 5 and 6 wells. After finding that the agreement did not apply to oil production from those wells, we concluded that the "parties to that agreement have no rights or interests in the production" from the Susie Nos. 5 and 6 wells. Id. The questions raised by Home-Stake indicate further explanation is required to clarify the precise nature of the decision. Accordingly, our prior decision is explained below.

[1] To support the argument that retroactivity is an issue in this case, Home-Stake cites 49 C.J.S. Judgments § 446 (Petition at 3). This section of the treatise considers when a judgment becomes final; it does not purport to analyze how or to what extent a judgment determines the rights of parties after suit is filed. It is difficult to identify just what it is that Home-Stake alleges has been given retroactive application in this case; in seeking to raise retroactivity as an issue, Home-Stake overlooks the basic nature of our decision, which found that a contract – the communitization agreement – did not apply to oil production. In this case, which required a determination whether a contract could, by its terms, apply to oil production from the two wells at issue, retroactivity is not an issue. Our 1994 decision found, after interpreting the communitization agreement, that the agreement did not apply to oil production from the Susie Nos. 5 and 6 wells. The undisputed operative facts were that both wells produced oil. If it need be said that our decision related to a specific time (rather than to an identifiable event), that time was when the wells produced oil, since it was the nature of the production obtained that determined the result reached by our decision.

Citing the communitization agreement, Home-Stake contends that payments of royalties were made in a reasonable good faith belief that the agreement should control such payments (Petition at 4); it is contended that a provision of the agreement excusing such actions should apply in this case. This argument, however, also misses the point of our 1994 decision, which found the communitization agreement was inapplicable. Since the agreement did not apply, none of its terms applied, including the escape clause cited by Home-Stake.

Further pursuing this line of argument, Home-Stake suggests that, consistent with language in Assiniboine & Sioux Tribes, 85 IBLA 39 (1985), it was reasonable for Home-Stake to rely on state spacing rules when dealing with oil production from the two Indian wells here at issue. The cited decision was, however, modified by the Federal court in Assiniboine & Sioux Tribes v. Bd. of Oil & Gas, 792 F.2d 782, 796 (9th Cir. 1986), wherein it was determined that BLM could not properly delegate responsibility to regulate resource development on Indian lands to state authority. Pertinently, the Federal court concluded that "the Secretary's role as fiduciary, the [state] Board's clear lack of jurisdiction over tribal leases, and the legislative silence about subdelegation all counsel in favor of very limited delegation of responsibilities in these circumstances." Id. It must be concluded, therefore, that Home-Stake has not, by making these arguments, shown a basis for modification of our previous finding concerning regulation by the Department of production from the Susie Nos. 5 and 6 wells.

Finally, Home-Stake argues that our 1994 decision amounts to an award of undetermined money damages against Home-Stake. This issue was not previously raised by Home-Stake and was not, therefore, directly considered in

our 1994 decision. Nonetheless, if further royalty payments are required as a result of our decision, that circumstance does not affect the conclusion that the communitization agreement is inapplicable to the two oil wells at issue. Home-Stake can participate in the determination of amounts to be paid and will have a right to appeal.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, Home-Stake Royalty Corp., 130 IBLA 36 (1994), is affirmed, as clarified by this opinion.

Franklin D. Amess
Administrative Judge

I concur.

R. W. Mullen
Administrative Judge

