

SANTA FE MINERALS, INC.

IBLA 95-92      Decided September 17, 1998

Appeal from a decision of the Deputy Commissioner of Indian Affairs denying an appeal of an order to pay additional royalties and related late payment charges for oil produced from Indian Lease No. 14-20-205-7610. MMS-92-0062-IND.

Affirmed.

1. Federal Oil and Gas Royalty Management Act of 1982: Royalties–Indians: Mineral Resources: Oil and Gas: Royalties–Oil and Gas Leases: Royalties: Generally–Statute of Limitations

The 6-year statute of limitations at 28 U.S.C. § 2415(a) (1994), for commencement by the United States of civil actions for damages, does not apply to limit administrative action by the Department. An MMS order requiring payment of additional royalties on an allotted Indian lands oil and gas lease is an administrative action that is not covered by that statute of limitations.

2. Estoppel–Federal Oil and Gas Royalty Management Act of 1982: Royalties–Indians: Mineral Resources: Oil and Gas: Royalties–Oil and Gas Leases: Royalties: Generally

Estoppel will not lie against the Government to preclude the assessment of additional royalties on an allotted Indian lands oil and gas lease where the lessee improperly paid royalties on production from a well which had been classified as an oil well, as though it were a gas well under a communitization agreement, based upon two MMS letters. The record shows that one letter did not contain erroneous advice. The lessee cannot show that it detrimentally relied on the erroneous advice in the other letter, or that it was ignorant of the true facts concerning the terms of the communitization agreement and the lease, and thus estoppel is inapplicable.

APPEARANCES: Martin B. McNamara, Esq., Dallas, Texas, for Santa Fe Minerals, Inc.; Amos E. Black III, Esq., Anadarko, Oklahoma, for Indian Mineral Interest Owners; Peter J. Schaumberg, Esq., Howard W. Chalker, Esq., and Geoffrey Heath, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Santa Fe Minerals, Inc. (Santa Fe), has appealed from a July 11, 1994, Decision of the Deputy Commissioner of Indian Affairs, Bureau of Indian Affairs (BIA), denying its appeal of a January 8, 1992, Order of the Dallas Area Audit Office (DAAO) (currently Dallas Compliance Division), Minerals Management Service (MMS), requiring it to pay additional royalties of \$618,801.01, and related late payment charges of \$654,235.57 on crude oil removed from the Yellow Eagle 6-1A well located on Indian Lease No. 14-20-205-7610. In its Order, MMS determined that the underpayment resulted from the fact that Santa Fe had improperly allocated production from the Yellow Eagle 6-1A well based on the terms of Communitization Agreement (CA) C40T103-I.

Indian Lease No. 14-20-205-7610 covers 161.82 acres located in Blaine County, Oklahoma. Santa Fe was the designated operator and a payor for the lease.

For the period covered by the audit, the lease was committed to CA C40T103-I which was effective May 1, 1983. As specified in the CA, it was established "to operate the communitized area as an entirety for the purpose and intention of developing and producing natural gas and associated liquid hydrocarbons." Under the CA, 25.1860 percent of the gas well production from the communitized area is attributed to the lease. The Yellow Eagle 6-1A, located on Lease No. 14-20-205-7610, was completed as a dually completed well. The completion into the Unconformity Chester (upper zone) formation was an oil well, and the completion into the Mississippi Solid (lower zone) formation was a gas well. This appeal concerns only the royalties paid for production from the Yellow Eagle 6-1A well from the Unconformity Chester formation. Royalties paid for production from the Mississippi Solid formation were not disputed by the January 8, 1992, Order and are not an issue in this appeal.

The Yellow Eagle well was completed September 2, 1983, with sales commencing during June 1983. In February 1984, Santa Fe filed a well completion report with the Oklahoma Corporation Commission (OCC) which stated that the well's gas-to-oil initial test was 625 cubic feet (cu. ft.) of gas to one barrel (bbl.) of oil. Under State of Oklahoma regulations, a well with a gas-to-oil ratio of less than 15,000 cu. ft. of gas to one bbl. of oil is classified as an oil well.

The Concho Agency, BIA, approved the CA on March 20, 1984. By letter dated March 29, 1984, BIA informed Santa Fe that "if any well in the communitized area is classified as an oil well, the crude oil and associated natural gas produced therefrom will not be considered as communitized substances covered by this agreement."

In 1991, DAAO audited Santa Fe's royalty payments. Initially, the audit period was January 1, 1986, through December 31, 1990. However, DAAO's initial findings led it to expand the audit period to include all production from the Yellow Eagle 6-1A well for the period June 1983 through December 1990.

The Bureau of Land Management (BLM) reclassified the well as a gas well as of June 20, 1991.

In its January 8, 1992, Order, MMS required Santa Fe to pay additional royalties of \$618,801.01 due through December 31, 1990, and related late payment charges of \$654,235.57 calculated through October 31, 1991, for oil produced from Indian Lease No. 14-20-205-7610. MMS stated that since initial completion of the Yellow Eagle 6-1A well as an oil well, all "upper zone" production should have been attributed only to Lease No. 14-20-205-7610. MMS found that Santa Fe had improperly allocated production from this oil well based on the terms of the gas CA and thereby underpaid royalties on Lease No. 14-20-205-7610.

On January 21, 1992, Santa Fe filed an application with the OCC requesting that the Yellow Eagle No. 6-1A well for the Unconformity Chester formation be reclassified from an oil well to a gas well under the CA, retroactive to March 31, 1986.

On February 11, 1992, Santa Fe appealed MMS' Order to the Commissioner of Indian Affairs under 30 C.F.R. Part 290. <sup>1/</sup> Santa Fe explained that it reported and paid royalty on production from the Yellow Eagle Well as a gas well in accordance with the CA, without any protest from MMS. (Notice of Appeal (NOA) at 2.) Santa Fe pointed out that since March 1986 and continuing each month thereafter until the present, the Yellow Eagle well has produced more than 15,000 cu. ft. of gas per barrel of oil, which meets the State of Oklahoma standard for classification as a gas well. Santa Fe noted that it had an application pending before the OCC for an order to confirm the status of the Yellow Eagle Well as a gas well. (NOA at 2-3.)

Santa Fe referred to two letters it received from MMS to support its argument that MMS classified the Yellow Eagle well as a gas producing well. In the first letter dated June 26, 1984, MMS stated:

On September 2, 1983, Well No. 6-1A Yellow Eagle, Longdale Field, Blaine County, Oklahoma, was completed on Communitization Agreement C40T103-I. Lease account 14-20-205-7610 was previously transferred from the Bureau of Indian Affairs for maintenance

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<sup>1/</sup> Santa Fe stated that it was appealing MMS' Order to the Director, MMS. However, in cases involving Indian lands, the appeal is properly made to the Commissioner of Indian Affairs. See 30 C.F.R. §§ 290.1 and 290.6. We will refer to Santa Fe's appeal of Feb. 11, 1992, as the appeal to the Commissioner.

due to production. You should continue to make rental and royalty remittances under the referenced lease payable to Minerals Management Service, for Bureau of Indian Affairs, the Concho Agency \*

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(NOA at 2; Ex. 1.) In the Agreement Reconciliation Summary Worksheet attached to the second letter dated May 12, 1988, MMS stated: "Well #6-1A Yellow Eagle was previously reported as lease basis production. This well should be reported as a communitization agreement." MMS notified Santa Fe in the letter that "[f]ailure to comply may result in implementation of erroneous reporting assessments." (NOA at 2; Ex. 2.) Santa Fe argued that the equitable principles of estoppel and laches required reversal of the Order since MMS had specifically and affirmatively directed payment of royalty on production from the Yellow Eagle Well under the CA, even threatening to impose penalties if Santa Fe failed to comply, and Santa Fe had complied with those MMS directives to its detriment. (NOA at 4.)

Santa Fe asserted that the Order's demand for payment was barred, at least in part, by the application of the statute of limitations codified at 28 U.S.C. § 2415(a) (1994). (NOA at 3.)

Finally, Santa Fe argued that the Order must be reversed because it did not contain an adequate statement of supporting facts or reasons to provide Santa Fe with due process of law. (NOA at 5.)

By memorandum dated June 24, 1992, the BLM Petroleum Engineer, Tulsa District Office, notified the Solicitor's Office of the Department of the Interior that the well probably could have been reclassified as a gas well in March 1986. However, the operator did not request reclassification at that time.

By letter dated July 29, 1992, the Manager of the OCC Engineering Department notified Santa Fe that based on the data submitted, the well should have been reclassified as a gas well effective March 1986. However, by letter dated October 7, 1992, the Manager of the OCC Technical Department notified the Solicitor's Office that based on a review of pertinent data, he believed the OCC's letter dated July 29, 1992, should not have recommended retroactive reclassification of the well to a gas well.

Santa Fe filed a motion with the OCC to withdraw its January 21, 1992, application for reclassification without prejudice, and on October 9, 1992, the OCC dismissed Santa Fe's application without prejudice.

In its November 9, 1992, amended notice of appeal, Santa Fe elaborated on the arguments presented in its February 11, 1992, appeal to the Commissioner. Santa Fe also argued that MMS was contractually bound by its 1984 and 1988 letters. (Amended NOA at 10.)

On November 23, 1992, the Indian Mineral Interest Owners (Indians), who own all of the restricted Indian minerals underlying the allotment

of Jennie Magpie, Cheyenne-Arapaho Roll No. 1964, filed a response to Santa Fe's appeal. The Indians have brought a claim against Santa Fe "individually, as Indians and owners of the mineral interest" for additional royalties, interest,<sup>2/</sup> and late payment charges associated with the unlawful diversion of mineral proceeds, namely crude oil, away from their lease. The Indians found no merit in Santa Fe's equitable arguments. They contended that all documentary evidence shows that the Yellow Eagle 6-1A well, as it relates to the "upper zone," was and is an oil well, and all production from the well should have been attributed only to the Magpie Allotment. (Indians' Response at 3.) The Indians claimed that they are not subject to a statute of limitations in an action to establish the right to, or right of possession of, real or personal property. (Indians' Response at 4.)

In a February 19, 1993, memorandum to the Chief, Appeals and Litigation Support Division, MMS, the Area Manager, DAAO, concluded that MMS' January 8, 1992, Order was correct and recommended that Santa Fe's appeal should be denied and MMS' action affirmed. On August 16, 1993, Santa Fe filed a response to this report. On September 9, 1993, the Indians filed a response to Santa Fe's arguments.

By Decision dated July 11, 1994, BIA's Acting Deputy Commissioner denied Santa Fe's appeal of MMS' Order assessing additional royalties and late payment charges. Citing Board decisions, the Deputy Commissioner stated that the statute of limitations in 28 U.S.C. § 2415(a) (1994) is inapplicable to this case because it is an administrative appeal rather than a court action. (Decision at 4.) Responding to Santa Fe's argument that the principles of equity require reversal of MMS' Order based on the MMS letters of June 26, 1984, and May 12, 1988, the Deputy Commissioner stated that reliance on erroneous or incomplete information given by an employee of the Department of the Interior cannot excuse compliance with a CA that is covered by applicable law and regulations. He also pointed out that the record shows that Santa Fe had sufficient knowledge that the Yellow Eagle well 6-1A was an oil well and that oil wells are not covered under the CA. (Decision at 4-6.) The Deputy Commissioner found that the administrative appeal satisfied Santa Fe's due process requirements. (Decision at 8.) He disagreed with Santa Fe's argument that the letters of June 26, 1984, and May 12, 1988, constitute contracts which bind MMS because the facts and circumstances in this case do not show a mutual intention to contract, without which there can be no contract in fact. (Decision at 9.)

In its appeal to the Board under 30 C.F.R. § 290.7, Santa Fe presents essentially the same arguments it presented on appeal to the Commissioner,

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<sup>2/</sup> We note that there is no provision for a separate assessment of "interest" in addition to the late payment charge. MMS is authorized to assess a late payment charge in accordance with 30 U.S.C. § 1721(a) (1994) and 30 C.F.R. § 218.54, which is interest for the late payment of royalties. See Oryx Energy Co., 137 IBLA 177, 184 (1996). There is an interest charge on the late deposit of royalty funds to an Indian account under 30 U.S.C. § 1721(d) (1994), but this matter is not before us.

placing further emphasis on the doctrines of estoppel and laches. Santa Fe argues that where MMS, with full knowledge of the facts, approved the CA, ratified this approval and expressly directed on two separate occasions that royalty payments be made under the CA, and without protest repeatedly and continuously over a period of more than 8 years accepted those payments it directed, MMS is appropriately estopped from later disavowing its conduct. (Statement of Reasons (SOR) at 8.)

In response, MMS asserts that MMS' March 26, 1984, letter did not direct Santa Fe to pay royalties due on production from the well as if it were a gas well. MMS asserts that even if the June 26, 1984, letter could be construed as a directive to pay royalties under the CA, Santa Fe knew that the well was an oil well and therefore any erroneous MMS directive would not excuse Santa Fe from properly paying its royalties. MMS refers to the principle that reliance upon information or opinion of any Government officer, agent, or employee cannot operate to vest any right not authorized by law.

MMS points out that BLM, rather than MMS, is the proper agency responsible for making the determination as to whether a well is a gas or oil well, and therefore, MMS' agent did not have the authority to instruct Santa Fe to report royalties under the CA in its May 12, 1988, letter.

MMS asserts that estoppel and laches do not prevent MMS from assessing additional royalties. MMS notes that the doctrine of laches does not prevent the United States from enforcing a public right which in this case means protecting the Indians' property against loss through possible negligence of public officers.

MMS contends that estoppel does not bar MMS' assessment of additional royalties because Santa Fe cannot show that it detrimentally relied on MMS' 1988 letter, and detrimental reliance is a necessary element of estoppel. MMS notes that estoppel against the Government must be based on affirmative misconduct such as misrepresentation of material fact, and the erroneous advice upon which the reliance is based must be a crucial misstatement in an official decision. MMS explains that it did not misrepresent a material fact or give erroneous advice in its 1984 letter.

MMS asserts that its Order requiring Santa Fe to pay additional royalties did not violate Santa Fe's rights to due process, because the Order provided Santa Fe ample facts and reasons for Santa Fe to understand the basis of its Order that the Yellow Eagle well is an oil well rather than a gas well.

MMS asserts that the statute of limitations is not a bar to the Board upholding the Decision below.

On May 30, 1995, the Indians filed a response to Santa Fe's appeal reiterating essentially the same arguments presented to the Commissioner. On August 31, 1995, Santa Fe filed a response to the Indians' brief in which it contends that the Indians have no standing to present briefs in

this appeal because there is no statutory or regulatory provision authorizing these individual Indian owners to assert and have adjudicated any claim against Santa Fe for back royalties.

We will first address the procedural issue of whether the Indians have standing to present briefs in this appeal. We find that the Indians are properly represented by MMS on appeal, and therefore, it is unnecessary to the outcome of this appeal to determine whether they can assert a claim against Santa Fe on their own behalf. However, as owners of the lease at issue, the Indians are interested parties that may be adversely affected by the Board's decision in this appeal. Although the Indians have not filed a motion to intervene, we note that the Board has granted intervenor status in similar situations. See Amoco Production Co., 143 IBLA 45, 49 (1998); Red Rock Hounds, Inc., 123 IBLA 314, 317 (1992); Southern Utah Wilderness Alliance, 123 IBLA 13, 16 (1992). Accordingly, we find that the Indians have standing to present briefs in this appeal.

[1] We reject Santa Fe's contention that the 6-year statute of limitations at 28 U.S.C. § 2415(a) (1994) precludes MMS from assessing additional royalties. That section, which governs the time for commencing judicial actions brought by the United States, provides in part:

Subject to the provisions of section 2416 of this title, and except as otherwise provided by Congress, every action for money damages brought by the United States or an officer or agency thereof which is founded upon any contract express or implied in law or fact, shall be barred unless the complaint is filed within six years after the right of action accrues or within one year after final decisions have been rendered in applicable administrative proceedings required by contract or by law, whichever is later \* \* \*.

28 U.S.C. § 2415(a) (1994). This Board has held numerous times that statutes establishing time limits for the commencement of judicial actions for damages on behalf of the United States do not limit administrative proceedings within the Department of the Interior. See Oryx Energy Co., 137 IBLA 177, 182 (1996); Texaco Exploration and Production, Inc., 134 IBLA 267, 270 (1995); Texaco, Inc., 134 IBLA 109, 116 (1995); Chevron U.S.A., Inc., 129 IBLA 151, 154 (1994), and cases cited. We have specifically declined to rule that MMS demands for additional royalty are barred by that provision. Texaco Exploration and Production, Inc., 134 IBLA at 270; Anadarko Petroleum Corp., 122 IBLA 141, 147-48 (1992).

In addition, in a September 7, 1994, order granting rehearing of its opinion in Phillips Petroleum Co. v. Johnson, 22 F.3d 616 (5th Cir. 1994), the court affirmed the District Court's grant of summary judgment to the defendants in two of four consolidated cases challenging MMS' orders to recalculate royalties and pay additional royalties, concluding that the statute of limitations did not bar the agency's action. The court stated:

The term "action for money damages" refers to a suit in court seeking compensatory damages. The plain meaning of the

statute bars "every action for money damage" unless "the complaint is filed within six years." (Emphasis added.) Thus, actions for money damages are commenced by filing a complaint. Actions that do not involve the filing of a complaint are not "action[s] for money damages." Since the government has filed no complaint, "the agency action is not a[n] action for money damages." Thus, § 2415 is no bar.

(Order at 3-4, quoted in Texaco Exploration and Production, Inc., 134 IBLA at 270-71.)

[2] The main focus of Santa Fe's appeal is that MMS should be estopped from requiring additional royalties because the MMS letters of June 26, 1984, and May 12, 1988, instructed Santa Fe to pay royalties as a gas well under the CA. The rules governing consideration of estoppel are well established. This Board has adopted the elements of estoppel described by the U.S. Court of Appeals for the Ninth Circuit in United States v. Georgia-Pacific Co., 421 F.2d 92 (9th Cir. 1970), summarized by this Board in Ptarmigan Co., 91 IBLA 113, 117 (1986), aff'd sub. nom. Bolt v. United States, 944 F.2d 603 (9th Cir. 1991):

Four elements must be present to establish the defense of estoppel: (1) the party to be estopped must know the facts; (2) he must intend that his conduct shall be acted on or must so act that the party asserting the estoppel had a right to believe it is so intended; (3) the latter must be ignorant of the true facts; and (4) he must rely on the former's conduct to his injury.

We have recognized that estoppel in the case of public lands must be based on affirmative misconduct such as a misrepresentation or concealment of a material fact. United States v. Ruby Co., 588 F.2d 697, 703 (9th Cir. 1978); D.F. Colson, 63 IBLA 221, 224 (1982); Arpee Jones, 61 IBLA 149, 151 (1982). Erroneous advice upon which reliance is predicated must be in the form of a crucial misstatement in an official decision. See David E. Best, 140 IBLA 234, 236 (1997), citing Rudy S. Sutlovich, 139 IBLA 79, 82 (1997); Leitmotif Mining Co., 124 IBLA 344 (1992).

The requirements for application of the doctrine of estoppel are not present in this case. At the outset, we do not find that MMS' June 26, 1984, letter contains any erroneous advice. It directs Santa Fe to "continue to make rental and royalty remittances under the referenced lease payable to the Minerals Management Service, for Bureau of Indian Affairs, the Concho Agency." This advice is correct. As MMS points out, under the terms of the lease, Santa Fe pays 100 percent of the royalties to the lessor of the lease. Besides instructing Santa Fe to pay royalties under the lease, it also provides instructions for obtaining an Accounting Identification number and instructions for completing a Payor Information Form, and gives Santa Fe a contact for inquiries regarding royalty reporting and payment requirements. The nature of this letter is clearly instructional and informational and does not constitute an official decision.

Neither can the May 12, 1988, letter, be a basis for the application of estoppel. First, although MMS provided erroneous advice by stating that royalties should be paid under the CA, Santa Fe did not rely to its detriment on that advice, because it had incorrectly paid royalties under the CA since production began in 1983.

Second, Santa Fe was not ignorant of the true facts. Santa Fe had knowledge of the terms of the CA which states that "it is desirable to operate the communitized area as an entirety for the purpose and intention of developing and producing natural gas and associated liquid hydrocarbons \* \* \*." (CA at 1.) Also, BIA's letter of March 29, 1984, specifically notified Santa Fe that "if any well completed in the communitized area is classified as an oil well, the crude oil and associated natural gas produced therefrom will not be considered as communitized substances covered by this agreement." Santa Fe admitted that the Yellow Eagle 6-1A well was classified as an oil well when it filed an application with the OCC on January 21, 1992, requesting that the well be reclassified from an oil well to a gas well under the CA retroactively to March 31, 1986.

Additionally, MMS' erroneous advice in its May 12, 1988, letter cannot excuse Santa Fe from paying the correct amount of royalties. It is well settled that "[r]eliance upon information or opinion of any [Government] officer, agent or employee \* \* \* cannot operate to vest any right not authorized by law." 43 C.F.R. § 1810.3(c); see Marathon Oil Co., 128 IBLA 168, 172 (1994); Raymond T. Duncan, 96 IBLA 352, 355 (1987). As MMS points out, this Board has affirmed MMS assessments of royalties when a lessee has failed to file a timely relinquishment of its lease, or has made incorrect royalty payments, based on erroneous advice of MMS employees. See Earth Sciences, Inc., 123 IBLA 369, 370-71 (1992); Shell Offshore Inc., 111 IBLA 350, 358 (1989); see also Supron Energy Corp., 46 IBLA 181, 189 n.6 (1980).

Nor are we persuaded that MMS' claim is barred by the doctrine of laches. It is well established that the doctrine of laches cannot be used to preclude the United States from enforcing a public right or protecting a public interest. See United States v. State of California, 332 U.S. 19, 40 (1947); Marathon Oil Co., 119 IBLA 345, 352-53 (1991); United States v. Wilson, 38 IBLA 305, 307-08 (1978). Therefore, we agree with MMS that the doctrine of laches does not prevent the United States from enforcing a public right which in this case means protecting the Indians' property against loss through possible negligence of public officers.

Santa Fe argues that MMS' Order must be reversed because it violates due process in that it does not contain an adequate statement of supporting facts or reasons. Santa Fe asserts that there was no explanation of how "BLM or MMS concluded that the Yellow Eagle Well was an oil well and that the Yellow Eagle Well was not subject to an approved gas communitization agreement \* \* \*." (SOR at 10.) We find no merit in this argument. In its Order, MMS explained that the Yellow Eagle 6-1A had a gas-to-oil initial test ratio of 625 cu. ft. of gas to 1 bbl. of oil. MMS pointed out that under State of Oklahoma regulations, a well with a gas-to-oil ratio of less than 15,000 cu. ft. of gas to 1 bbl. of oil is classified as an oil

well. Therefore, the Yellow Eagle 6-1A was classified as an oil well in conformance with standards set by the State of Oklahoma. (Order at 2.) Also in its Order, MMS emphasized that the CA was approved to include only gas wells, and that the Yellow Eagle 6-1A "upper zone" well, which was classified as an oil well, was not part of any Federally approved communitization agreement. (Order at 3.)

MMS also referred to BIA's March 29, 1984, letter informing Santa Fe that any oil well completed within the boundaries of Lease No. 14-20-205-7610 was not subject to the approved CA. Furthermore, in his February 19, 1993, report, the Area Manager, DAAO, reviewed the background of Santa Fe's case and responded to the arguments presented by Santa Fe in its appeal to the Commissioner. MMS sent a copy of this report to Santa Fe and gave Santa Fe an opportunity to comment. Judging from the contents of Santa Fe's appeal to the Commissioner and subsequently to this Board, we find that Santa Fe has not demonstrated that it was hindered in presenting its appeal by a lack of information in MMS' Order. The recipient of an order must be given a reasoned and factual explanation of the justification for the order and some basis for understanding and accepting it or, alternatively, for appealing and disputing it before the Board. See National Park Service (Stuart G. Ramstad), 125 IBLA 335, 341 n.4 (1993); Union Oil Company of California, 116 IBLA 8, 16 (1990); Eddleman Community Property Trust, 106 IBLA 376, 377 (1989); Southern Union Exploration Co., 51 IBLA 89, 92 (1980) (and cases cited therein). We find that MMS has met that standard in this case.

Santa Fe requests a hearing pursuant to 43 C.F.R. § 4.415 "to present evidence on any issue of fact that may be determined by the Board not to be established to be as set forth in this notice of appeal by the record in this case absent such hearing." The Board has the authority under 43 C.F.R. § 4.415 to order a hearing before an Administrative Law Judge, but will not do so in the absence of a disputed material issue of fact. See Woods Petroleum Co., 86 IBLA 46, 55 (1985). There is nothing to indicate that any material fact is in dispute. Therefore, a hearing is not warranted.

To the extent not specifically addressed herein, the issues raised in this appeal have been considered and rejected.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed.

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Will A. Irwin  
Administrative Judge

I concur:

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Franklin D. Amess  
Administrative Judge

