CONTINENTAL RESOURCES, INC.

184 IBLA 59 Decided July 29, 2013

United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

CONTINENTAL RESOURCES, INC.

IBLA 2013-151 Decided July 29, 2013

Appeal from a decision of the Director, Office of Natural Resources Revenue, denying in part and granting in part an appeal of an Order to Report and Pay Additional Royalties on a Federal natural gas lease.

Appeal Dismissed.

1. Federal Oil and Gas Royalty Simplification and Fairness Act of 1996--Office of Natural Resources Revenue: Appeals to Director--Oil and Gas Leases: Royalties--Rules of Practice: Appeals: Jurisdiction

   Under section 4(a) of the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996, the Department must, within 33-months, issue a final ruling in an appeal of an order or demand. Failure to do so triggers the default statutory resolution of the matter codified at 30 U.S.C. § 1724(h) (2006). Once the 33-month period has expired, the Board has no jurisdiction to make any ruling in the matter and must dismiss any pending appeal.

2. Federal Oil and Gas Royalty Simplification and Fairness Act of 1996--Office of Natural Resources Revenue: Appeals to Director--Oil and Gas Leases: Royalties--Rules of Practice: Appeals: Jurisdiction

   Congress enacted the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996, including the 33-month period and statutory default consequence, for the benefit of oil and gas lessees. The statutory default decision exhausts administrative remedies and entitles an appellant to seek judicial review of the statutory default decision. The 33-month period may be extended by mutual written agreement of the appellant and the

> Secretary. Where such an extension is agreed upon to facilitate settlement discussions, and the Department unequivocally terminates those discussions, the running of the 33-month period resumes.

APPEARANCES: Kenneth M. Simon, Esq., Sarah K. Orr, Esq., for Continental Resources, Inc.; Michael P. Marchetti, Esq., Office of the Solicitor, U.S. Department of the Interior, for the Office of Natural Resources Revenue.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HOLT

This case addresses the 33-month period in which the Department must issue decisions under section 4(a) of the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (FOGRSFA), 30 U.S.C. § 1724(h) (2006), and the consequences of the Department's failure to issue a final decision by the deadline. In this case, the deadline has passed and the Board lacks jurisdiction to issue any ruling in the pending appeal. Therefore, the appeal must be dismissed.

Background

This matter begins with a May 5, 2010, Minerals Management Service (MMS)[1] Order to Report and Pay Additional Royalties (MMS Order), that was issued to Continental Resources, Inc. (Continental). Continental initially appealed the MMS Order through the MMS internal appeals process in June 2010.[2] Continental's appeal is subject to the 33-month statutory time frame for the Department to rule in an administrative proceeding under FOGRSFA.

Continental and MMS executed an Extension and Hold Agreement (Extension Agreement) on July 26, 2010, agreeing to toll the running of the 33-month deadline from June 12, 2010, through December 13, 2010, "pending completion of settlement

[1] MMS was the predecessor agency to the Office of Natural Resources Revenue (ONRR). For the purposes of this decision, references to MMS and ONRR reflect the proper terminology at the time referenced, but otherwise should be viewed as identifying ONRR.

[2] The record before the Board does not definitively show when MMS received Continental's appeal of the MMS Order. However, Continental suggests that it filed its appeal to the MMS Director on June 10, 2010. Statement of Reasons (SOR) at 2. ONRR states that Continental submitted the appeal via Federal Express on June 10, 2010, and while the appeal was not date stamped by ONRR, "ONRR concedes that the appeal was timely received, and that the appeal was most likely received on June 11, 2010." ONRR's Response to Show Cause Order (ONRR Response) at 1.

discussions between the appellant and MMS." Due dates for Continental's filing documents relevant to the appeal also were extended, and MMS agreed not to issue a decision during the period of the Extension Agreement. The Extension Agreement also provided that "[e]ither the Appellant or MMS may terminate this Agreement by giving written notice. Such notice will terminate the Agreement, the extension of time to file any documents by the appellant, and the extension of time frames for processing this appeal 30 days after the date of the notice." Continental asserts that "ONRR never engaged in settlement negotiations." SOR at 2. ONRR subsequently sent Continental a letter, dated August 18, 2010 (August 18 Letter), informing Continental of ONRR's "decision not to enter into settlement discussions" and informing both Continental and ONRR's Appeals Division that, through the letter, ONRR was returning the matter to "the administrative appeals process." No other agreement extending the 33-month deadline appears in the record before us.

On April 11, 2013, 34 months after Continental appealed the MMS Order, the Director of ONRR issued his decision (ONRR Decision). Continental timely appealed the ONRR Decision to the Board. The Board received Continental's Notice of Appeal (NOA) on May 23, 2013, and ONRR submitted the Administrative Record on June 21, 2013. At that point, on June 24, 2013, the Board issued an Order to Show Cause requiring the parties to demonstrate why the Board should not dismiss the appeal for a lack of jurisdiction, based on the expiration of FOGRSFA's 33-month time period. Continental responded, asserting that the time period has expired; ONRR responded, asserting that it has not.

Analysis

[1] Under 30 U.S.C. § 1724(h) (2006), royalty demands or orders issued by the Secretary of the Interior or a delegated State are subject to administrative appeal, and the Secretary must issue a final decision in any administrative proceeding within 33 months from the date such proceeding was commenced. *Id*. § 1724(h)(1). As directed by the statutory provisions, if the Secretary does not make the decision within this time frame, the Secretary shall be deemed to have made a decision and the appellant has a right to judicial review. *Id.* § 1724(h)(2). In a case where the ONRR Director has ruled, and that ruling is before the Board on appeal, the statutory result specifically applies to the ONRR Director's ruling. 30 U.S.C. § 1724(h)(2) (2006); 43 C.F.R. § 4.906(b)(2). If the 33-month period has expired, the Board loses jurisdiction and must dismiss the pending appeal at that time.

The Board's rules provide that the 33-month statutory period within which the Department must make a decision begins "on the date MMS received your Notice of

Appeal." 43 C.F.R. § 4.904(c).[3] The 33-month period ends "on the same day of the month of the 33rd calendar month after your appeal commenced . . . plus the number of days of any applicable time extensions." *Id*. § 4.904(d). In this case, ONRR indicates that it received Continental's NOA on June 11, 2010, and the initial deadline for the Department to rule was March 11, 2013. However, the 33-month period was tolled by the Extension Agreement. The length of this tolled period depends on whether ONRR's August 18 Letter terminated the Extension Agreement, or the Extension Agreement remained in effect through December 13, 2010.

ONRR's only argument in support of its assertion that the 33-month period has not terminated in the instant case is that the August 18 Letter did not expressly extinguish the extension and thus that extension continued from June 12, 2010, through December 13, 2010. ONRR Response at 3-5. Although the Extension Agreement "put on hold" the "appeal listed above . . . *pending completion of settlement discussions*" (emphasis added), and ONRR's letter unambiguously rejected settlement discussions and returned Continental's appeal to the normal appeals process, ONRR argues that it intended, and Continental should have understood, that the Extension Agreement would continue in effect until and unless Continental responded to ONRR's letter with a letter of its own expressly terminating the extension. *See* ONRR Response at 4.

[2] Congress enacted FOGRSFA for the benefit of appellants. *Fina Oil and Chemical Co.*, 19 OHA 200, 204 (2001). Congress placed an obligation on the Department to issue prompt rulings in royalty appeals. *See Murphy Exploration*, 252 F.3d at 480. The limited 33-month time period is designed to prevent interminable appeals within the Department and to allow appellants to exhaust their administrative remedies so they can appeal a matter to Federal court. *See Burlington Res. Oil & Gas Co.*, 183 IBLA 333, 343 (2013) (finding the expiration of the 33-month period "afford[s] the aggrieved party the right to seek judicial review"). While a mutual agreement between an appellant and the Department can extend the 33-month period, we are unpersuaded by ONRR's argument that Continental "is wrong"

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[3] We note that, in *Murphy Exploration and Prod. Co.* v. *U.S. Dep't of the Interior*, the Circuit Court held that both private parties' refund requests and "orders to pay issued by DOI" constituted "'demands'" that triggered the 33-month period. 252 F.3d 473, 481 (D.C. Cir. 2001). Thus, an "'administrative proceeding'" is not limited to an appeal of an order issued by ONRR, but also includes orders issued by ONRR which are subject to appeal. *Id*. By that reckoning, the Department's 33-month period would begin on the date MMS issued its order, in this case May 5, 2010. However, this apparent conflict does not affect the outcome of the instant appeal and we decline to address it further.

to believe "that settlement discussions were a condition of the [Extension] Agreement." ONRR Response at 3.

By its own terms, the Extension Agreement indicates that it was intended to facilitate settlement discussions, by extending due dates for Continental's submission of documents in the MMS appeal process, delaying the issuance of an MMS decision with respect to Continental's appeal, and extending the 33-month deadline by a period equal to the extension period. If either party terminated the Extension Agreement, the effect would not only be to restart the running of the 33-month period (beginning 30 days after the date of the notice of termination), but would also terminate the extension of due dates for Continental to submit documents with respect to its appeal, and time frames for MMS' processing of Continental's appeal.

MMS's August 18 Letter explicitly announced ONRR's rejection of settlement discussions with Continental, and informed Continental and ONRR's Appeals Division [4] that "the administrative process should continue for the Appeal." The clear import of the letter is that all aspects of the normal administrative appeals process should be resumed (presumably 30 days after the August 18 letter, as stated in the Extension Agreement), and ONRR would issue a decision on the appeal. ONRR, however, argues that settlement discussions were not the purpose of the Extension Agreement, despite its clear language stating that the Extension Agreement was to delay the appeal process "pending completion of settlement discussions," and that the Extension Agreement continued in effect because the August 18 Letter did not mention the 33-month period, even though it explicitly terminated all aspects of the parties' agreement. Continental believed, and still believes, that the August 18 Letter terminated the Extension Agreement, *see* Continental's Response to Show Cause Order at 3, 4 n.2. *See* 30 U.S.C. § 1724(h)(1).

MMS did not choose to let the extension lapse by its own terms on December 13, 2010. Instead, ONRR affirmatively acted to formally notify Continental that it had rejected engaging in settlement discussions and was "returning the matter to the administrative appeals process." Given the fact that the purpose of the agreement was to extend the administrative appeals process, ONRR's August 18 letter cannot be construed as anything else but a termination of the agreement. ONRR makes no plausible argument as to why Continental should have expected that its appeal would continue to be delayed and languish for an additional 3 months after being informed by ONRR that its appeal was being returned to the

[4] Those ONRR officials copied on the August 18 letter included the ONRR Chief, Policy and Appeals, and the Senior Appeals Coordinator who executed the Extension Agreement on behalf of MMS.

normal appeals process. Such delay is precisely the ill Congress sought to eradicate by implementing the 33-month time period.[5]

We find that ONRR terminated the Extension Agreement by written notice on August 18, 2010. By its own terms, the effect of the Extension Agreement ended 30 days later, on September 17, 2010. The total extension period effectuated by the Extension Agreement was 97 days. Therefore, the deadline for the Department to rule in this matter was June 17, 2013, which has passed. In these circumstances, the Secretary is deemed to have finally ruled as provided for in the statute, 30 U.S.C. § 1724(h)(2). Continental may immediately seek judicial review of the Secretary's deemed decision, and the Board is without jurisdiction to make any further ruling on the matter.

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 appeal is dismissed.

/s/
H. Barry Holt
Chief Administrative Judge

I concur:

/s/
James F. Roberts
Administrative Judge

[5] The Board notes that even under ONRR's interpretation of the circumstances in this case, the deadline for the Department to make a final ruling is Aug. 12, 2013. ONRR Response at 5. ONRR also has announced its intention to "timely file" its answer to Continental's SOR on July 22, 2013. *Id*. Thus, ONRR ambitiously expects the Board to make a well-founded and reasoned ruling on Continental's appeal within 21 days, on a matter that ONRR admits required at least 34 months of active deliberation by ONRR before it issued its Apr. 11, 2013, decision.