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Mineraals Management Service
Royalty Management Program
Rules and Publications Staff
P.O. BOX 25165, MS 3021
Denver, Colorado 8022500165

RE: Establishing Oil Value for Royalty Due on Indian Leases;
Notice of Proposed Rule Making by MMS
#63 Fed. Reg. 7089 2-12-98

We wholeheartedly support the provisions being made to MMS by Giant Industries, Inc. And would like this letter to be counted as opposing the matters.

J.C.Fischer
c/o JMS Consultants
Carlton H. Stowe, CEO

Carlton H. Stowe 4/7/98

Enclosure:



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April 1, 1998

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J C Fisher
c/o JMS Consultants
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Re: Establishing Oil Value for Royalty Due on Indian Leases; Notice of Proposed Rule Making by
the Minerals Management Service

To Whom It May Concern:

We have reviewed the referenced Notice and are extremely concerned about increased burdens on royalty payors for oil produced on Indian leases. A copy of the Notice at 63 Fed. Reg. 7,089 (February 12, 1998) is enclosed for your review. As a minimum, the proposed regulations would (i) unfairly increase the value of oil for royalty calculation purposes; (ii) greatly increase the complexity of the royalty payment process; and (iii) significantly increase the reporting and record keeping requirements.

Because your company is a valued supplier of crude oil, Giant has provided the service of royalty payment. We hope to be able to continue providing the service. However, our ability to do so is jeopardized by this proposal of the Minerals Management Service ("MMS").

April 13, 1998 is the deadline for submitting comments on the proposed regulations to the MMS in Denver. The addresses for comments are as follows:

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Denver, Colorado 80225-0165

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Giant is currently developing a comprehensive set of comments on these proposed regulations to submit to the MMS by the April 13 deadline. We urge you to do the same by filing your comments in the strongest possible terms. The following are summaries of a few of the points we will make:

1. **Definition of "designated area"** - This term, which usually corresponds to an Indian reservation, would replace the lease as the geographic area from which a transportation allowance would be calculated. For Indian royalty valuation purposes, the transportation allowance should be calculated from the point where oil is measured for sale, which is usually on the lease. The impact of the MMS proposal would be that no gathering or other transportation charges on an Indian reservation could be an allowable deduction.
2. **Calculation of "major portion"** - The MMS proposes to establish the major portion value at the 75th percentile from the bottom rather than at a point just above the 50th percentile, as provided by current regulations. Such an increase in value would have a significant impact on the amount of royalties due and the net revenue to be received by the lessee. Although in our opinion the concept of "major portion" pricing is unfair, if major portion continues to be used, the concept should at least be implemented in accordance with its terms and should not be abused. According to dictionary definitions and common understanding, "major" means "greater in number". Thus, the 50th percentile plus one and not the 75th percentile should be used.
3. **Calculation of NYMEX futures prices** - One of the three possible values is based on NYMEX futures prices adjusted for location and quality differences. The MMS proposes to use the average of the five highest daily NYMEX settlement prices for a given month, which it claims is "in keeping with a 75th percentile major portion calculation." (p. 7092.) This concept is completely inappropriate for, as a minimum, the following reasons:
 - (i) the five highest daily NYMEX settlement prices in a given month are not determined until well after the opportunity to sell on those days has passed; and
 - (ii) even the ill conceived rationale of the 75th percentile would require using the fifth or sixth highest daily settlement price in a given month, and not the average of the five highest prices.Therefore, if the concept of utilizing NYMEX settlement prices has any merit, it should be the average of ALL NYMEX daily settlement prices for the month of delivery.
4. **Subjectivity of value determination** - The proposed regulations would give the MMS and the Indian lessor numerous opportunities to retroactively increase the value of oil using subjective criteria. For example, the definition of "major portion" refers to the highest price paid or "offered" at the time of production for the major portion of oil. Offers that are not accepted would be difficult to verify. Additionally, gross proceeds-based value must be based on "the highest price that you can receive through legally enforceable claims". §206.52(b)(4). The only way to verify that criterion would be through an actual lawsuit. Other opportunities exist to retroactively increase value using subjective criteria that cannot be verified by the lessee. The unfairness of responding to retroactive adjustments is even more pronounced when the purchaser, rather than the lessee of record, is providing the service of being the royalty "payer".
5. **Data production** - Lessees, defined broadly to include purchasers and other who are not lessees of record, would be required to provide sales and volume data for production sold or purchased from

April 1, 1998

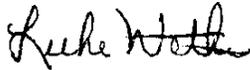
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the designated area or from nearby fields or other areas upon request by the MMS or Indian representatives. This includes sales and volume data from fee and state leases. There would be substantial opportunity for abuse of such data requests. The MMS and Indian representatives should not have audit and document production rights concerning transactions between a purchaser providing the service of royalty payment and a lessee of non-Indian leases. The potential value of this information would be too limited to justify imposing such an extreme burden on a purchaser who is only paying royalty as a service to a lessee. The scope of any audit and document production should be limited to the lessee of record and not the purchaser paying royalty as a service to the lessee.

These are a few of the many comments that can and should be made concerning the proposed rule making. If the MMS and Indian lessors wish to impose another tax on oil, simply call it what it is, A TAX, and do not implement a difficult, burdensome and never certain valuation process. An alternative approach would be to require Indian lessors or their representatives to take all royalty oil in kind and market such oil on their own behalf. In this manner, they would control their own destiny by obtaining, theoretically, the best value for their resources. Such an approach would insure that the Indian lessors would get fair market value and would significantly enhance the efficiency of the process.

If you agree comments are warranted, we encourage you to submit your comments before the deadline of April 13. We must work together to defeat this proposal.

Very truly yours,



Luke Wethers
Vice President

Enclosure

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