



STATE OF WYOMING
OFFICE OF THE GOVERNOR

JIM GERINGER
GOVERNOR



STATE CAPITOL
CHEYENNE, WY 82002

March 23, 1999

Mr. Thomas Kitsos
Department of Interior
1849 C Street, NW
Mail Stop 0100
Washington, DC 20240

Mr. David S. Guzy
Chief, Rules and Procedures
Minerals Management Service
Royalty Management Program
P. O. Box 25165, MS 3021
Denver, Colorado 80225

Re: Proposed Rule on Accounting Relief for Marginal Properties Federal Register Vol. 64, No. 13

Gentlemen:

Thank you for inviting the State of Wyoming to comment on the Proposed Rule on Accounting Relief for Marginal Properties. The State of Wyoming has many properties that would qualify as marginal under the proposed rule.

The proposed rule would add an administrative burden that could result in litigation. Such was not the clear intent of Congress when the Royalty Simplification and Fairness Act (RSFA) was passed. Clearly the intent of Congress was for the MMS and the States to work jointly to determine if a particular relief should be granted. Neither should act unilaterally. The proposed rule does not achieve that. My recommendation to reduce or eliminate this administrative burden is to allow the State to control our interests through mandatory Royalty In-kind.

We are concerned with the method that MMS proposes to grant accounting relief. I reference the Section-by-Section Analysis of § 204.6, which states:



Mr. Thomas Kitsos
Mr. David S. Guzy
March 23, 1999
Page 2

"If MMS denies your request for prepayment or accounting and auditing relief...because the State denied your request, you could not appeal MMS's decision under 30 CFR part 290 or 43 CFR part 4, subpart J. This is because RSFA section 7(a) provides the State with unconditional veto authority over such requests. Accordingly, MMS believes that it does not have authority, and Congress did not intend for it, to change a State's decision through the administrative appeal process. Thus, you only could challenge a State's denial of your request directly in Federal district court." (Emphasis added.)

MMS's interpretation of the Royalty Simplification and Fairness Act, Section 7(a) is clearly incorrect. 30 USC 1721(a) requires that MMS and the State: "shall jointly determine on a case by case basis" whether to grant relief. The language of the statute is unequivocal that the determination for relief needs to be made jointly. A division into separate groups for determination of relief as the rules being promulgated would do, is not the intent of the statutes; therefore, I request that the proposed rules be withdrawn and that rules developed jointly with the States be promulgated. Those rules must include a methodology whereby the State and MMS can jointly develop and determine on a case by case basis whether relief would be granted or denied.

In Section 204.213(b) of the proposed rule, the State "must notify MMS in writing within 30 days, or such longer period as MMS may allow." Subpart (c) of the same section proposes that if the State fails to "notify MMS of its decision within the time period allowed under paragraph (b) of this section, then the State is deemed to have agreed with MMS's preliminary determination." This Section allows MMS to take their time in determining relief but then places the State under the burden to act within 30 days or accept MMS determination. That is unacceptable. This Section must be removed.

Section 204.213(2) *Coordinated royalty and severance tax audits* must also be removed. While the State does perform coordinated royalty and severance tax audits, the potential here is to embark on a course that leads to entangling MMS in an area of law controlled by State statutes. Federal regulations can not invade the auspice of state government. In this instance, federal regulations are without the legal authority to prescribe when the State of Wyoming does severance tax audits and should not attempt to gain authority through any rulemaking process.

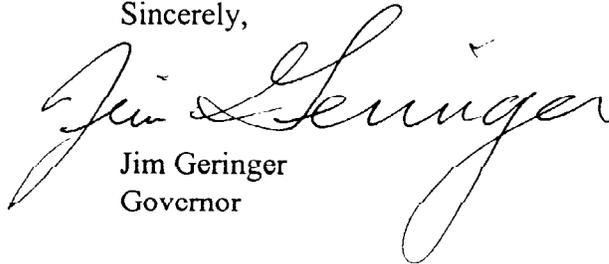
The additional cost generated by MMS's review of requests must not be included in Net Receipts Sharing calculations. The proposed rules would allow MMS to charge a processing fee for

Mr. Thomas Kitsos
Mr. David S. Guzy
March 23, 1999
Page 3

marginal properties accounting options. Under no circumstances should MMS keep this fee to themselves. MMS must share any additional revenue with its partner, the State.

I invite MMS to work with the State, Congress, and industry to ensure that "Accounting Relief for Marginal Properties" is handled in the most efficient and effective manner for all parties.

Sincerely,



Jim Geringer
Governor

JG/sc

cc: United States Representative Barbara Cubin
United States Senator Michael B. Enzi
United States Senator Craig Thomas
Michael Geesey
Steven Dilsaver