September 18, 2006

Bureau of Land Management
1620 L St., N.W.
Suite 401
Washington, DC 20036 By e-mail and hand delivery

Attention: RIN 1004-D86

Minerals Management Service
Minerals Revenue Management
Chief of Staff Office- Denver
P.O. Box 25165
MS 302B2
Denver, CO 80225-0165 By e-mail and 1st class mail

Attention: RIN 1010-AD32

To Whom It May Concern,

Following are comments on behalf of the State Controller of California in regards to the above RIN numbers:

MMS's Explanation of Proposed Amendments states that, "the royalty rate BLM prescribes will take into account achieving the same level of royalty revenues over a 10-year period as the regulation in effect on the date of enactment of the EP Act...." In proposed §3211.17 BLM sets the royalty rate for leases that previously did not produce geothermal resources for commercial generation of electricity from Class II and III leases at 1.75 percent. No explanation is offered as to why the 1.75 percent rate will result in the same level of royalty revenue. The data and analysis underlying this conclusion are necessary to evaluate the proposal. Furthermore, the proposed rules imply that the BLM prescribed rates are not applicable to a Class I lease that previously produced geothermal resources which is being converted to a Class II or Class III lease. Specific language should be added to § 3211.17 to insure that BLM's rates are still applicable.

Section 3212.25 permits a lessee to request the conversion of a Class I lease into a Class II or Class III lease. The regulation should provide that the election cannot be reversed. The lessee should not be permitted to continually shop for the class that yields the least royalty.

Sections 206.352 establishes the royalty due on geothermal resources used for the commercial generation of electricity; subsection (b) (2) applies to Class II leases and (b) (3) applies to Class III leases. Both subsections provide that the royalty is the "gross proceeds from the sale electricity for the production month multiplied by the royalty rate." They further provide, "You may not reduce gross proceeds by any deduction." There is an ambiguity created here by the use of the term "gross proceeds." The term should be defined so as not to permit any deductions from the sale price.

The proposed regulations add a new paragraph (§ 202.353) regarding the form required for reporting quantities in cases of direct use. For example subparagraph (b) requires the reporting of "Millions of Btu's to the nearest whole million Btu;" "Millions of gallons to the nearest million gallons;" and "Millions of pounds to the nearest whole million pounds." Because this provision could encourage a lessee to control its incremental production to avoid royalties, we recommend eliminating it.

The proposed rules provide that for new leases in non-arms's length transactions, or in no sales situations, the royalty on electricity produced from geothermal resources be based on gross proceeds from the sale of the electricity rather than on the "net back" system that was used prior to the Energy Policy Act. The proposed rules appear to imply that royalties can be determined by the "net back" method for arm's length transactions. If such is the case, we recommend the proposed rules be clarified to clearly limit the use of the net back method to Class I leases.

On behalf of Steve Westly,
State Comptroller of California

Henry M. Banta
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