GAO

United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

B-276561

September 30, 1997

The Honorable Carolyn B. Maloney
House of Representatives

Dear Ms. Maloney:

Your letter of March 12, 1997, asked for our views about the authority of the Department of the Interior's Minerals Management Service (MMS) to settle certain disputes over royalties owed under federal leases. Specifically, you were concerned whether MMS settlement agreements with Exxon Company U.S.A. and Chevron U.S.A. Inc. in 1993 and 1994 complied with the requirement under 31 U.S.C. § 3711 for Department of Justice approval of agency compromise of claims of the Government exceeding $100,000.

Under 31 U.S.C. § 3711(a)(2), agencies have authority to compromise debt claims where the principal amount does not exceed $100,000, or such higher amount as the Attorney General may from time to time prescribe. If the principal amount of the debt exceeds $100,000, only the Department of Justice has the authority to compromise.[1] You asked that we determine, based on the two settlement agreements, whether the agreements should have been approved by the Department of Justice. It is our view that the 1993 MMS settlement with Exxon should have been submitted to the Department of Justice for approval to the extent it compromised individual claims over $100,000. The Department of Justice was a party to the 1994 Chevron settlement agreement, which was approved by an Associate Attorney General.

[1]Several agencies have their own agency-specific or program-specific compromise authority. See, for example, 62 Comp. Gen. 489 (1983) (Economic Development Administration); 28 Comp. Gen. 638 (1949) (insured mortgage claims by predecessor of Department of Housing and Urban Development).

BACKGROUND

Royalty Payments

The Department of the Interior, through its Minerals Management Service, issues and administers leases for offshore oil and gas production under the Outer Continental Shelf Lands Act,[2] for onshore production on federal lands under the Mineral Leasing Act[3] and the Mineral Leasing Act for Acquired Lands,[4] and for production on Indian tribal and allotted lands.[5] MMS collects royalty payments from lessees in return for the right to extract oil and gas from the leased properties. Royalties are calculated as a specified percentage of the value of production removed or sold from the lease. MMS regulations provide that the royalty due on oil and gas production shall be the value, for royalty purposes, determined pursuant to 30 C.F.R. part 206 multiplied by the royalty rate in the lease.[6]

The Federal Oil and Gas Royalty Management Act (FOGRMA), 30 U.S.C. §§ 1701-1757, directs the Secretary to establish "a comprehensive inspection, collection and fiscal and production accounting and auditing system to provide the capability to accurately determine oil and gas royalties, interest, fines, penalties, fees, deposits, and other payments owed, and to collect and account for such amounts in a timely manner."[7] The FOGRMA further provides that the Secretary "shall audit and reconcile, to the extent practicable, all current and past lease accounts for leases of oil or gas and take appropriate actions to make additional collections or refunds as warranted."[8]

MMS operates according to an honor system similar to the Internal Revenue Service's, in which the producing companies report their production and sales and then compute and pay the royalties they owe. MMS's role is primarily one of

---

[2]43 U.S.C. § 1331 et seq.

[3]30 U.S.C. § 181 et seq.

[4]30 U.S.C. § 351 et seq.

[5]25 U.S.C. §§ 396, 396a-396g.

[6]30 C.F.R. §§ 202.100, 202.150.

[7]30 U.S.C. § 1711(a). MMS has recently published a supplementary proposed rule regarding valuation of crude oil produced from federal leases. See 62 Fed. Reg. 36030 (1997).

[8]30 U.S.C. § 1711(c)(1).

oversight--taking the actions necessary to reasonably ensure that mineral reports and payments by royalty payors comply with the various applicable laws and regulations. The MMS enforcement process involves multiple steps and multiple stages of review. An order to pay or perform certain work is first given by an operating division of the Royalty Management Program. It may require the payment of a billed amount or may require performance of other compliance steps such as submitting revised royalty or production reports.

Decisions and orders issued by the MMS's Royalty Management Program are subject to administrative appeal to the Director of MMS, if federal lands are involved, or to the Commissioner of Indian Affairs, if Indian leases are at issue.[9] Any party to a case adversely affected by a final decision of the Director, MMS, has a right of appeal to the Interior Board of Land Appeals in accordance with the procedures provided in 43 C.F.R. part 4.[10] A decision issued by the IBLA is the final decision of the Department of the Interior.[11]

Federal Debt Collection

The Federal Claims Collection Act of 1966, as amended and codified at 31 U.S.C. § 3711, provides the basic legal framework for agency collection of debts owed to the United States, with oversight by the Department of Justice.[12] The Federal Claims Collection Standards, which implement the act, use the terms "debt" and "claim" interchangeably, and define "debt" as "an amount of money or property which has been determined by an appropriate agency official to be owed to the United States from any person, organization, or entity, except another Federal

---

[9]30 C.F.R. part 290. In cases where the Director issues or concurs in Royalty Management Program decisions or orders, an appeal to the Director is precluded, and the matter must go to the Interior Board of Land Appeals for administrative review. 30 C.F.R. § 290.2. MMS has recently proposed rules in response to the 33-month deadline on deciding appeals involving federal oil and gas leases enacted in section 4 of the Federal Oil and Gas Royalty Simplification and Fairness Act, Pub. L. 104-185, 110 Stat. 1700. See 61 Fed. Reg. 55607 (1996).

[10]30 C.F.R. § 290.7.

[11]43 C.F.R. § 4.1(b)(3).

[12]The General Accounting Office Act of 1996, Pub. L. No. 104-316, § 115(g), eliminated the Comptroller General's responsibility to prescribe, with the Attorney General, claims collection standards governing collection and compromise of claims in favor of the Federal Government. The act left authority for the standards with the Attorney General.

agency."[13] The act requires each agency to attempt collection of all claims of the United States for money or property arising out of the activities of, or referred to, that agency.[14]

Under 31 U.S.C. § 3711(a)(2), agencies have authority to compromise debt claims where the principal amount does not exceed $100,000, or such higher amount as the Attorney General may from time to time prescribe. In the claims context, "compromise" means accepting in full satisfaction of the claim less than the full amount owed. If the principal amount of the debt exceeds $100,000,[15] only the Department of Justice may compromise, unless the agency has its own agency-specific or program-specific compromise authority. Although the Department of the Interior does currently have specific statutory authority to compromise oil and gas claims, at the time of the matters at issue here Interior did not have its own authority.[16]

The Federal Claims Collection Act does not authorize accepting a lesser amount merely for the sake of closing out the claim. Rather, evaluation and acceptance of compromises are governed by criteria found in the Federal Claims Collection Standards, specifically 4 C.F.R. part 103, and the Department of the Interior standards for the compromise of claims in 344 Departmental Manual 4.1 to 4.5. The

---

[13]4 C.F.R. § 101.2(a). The original Federal Claims Collection Act (FCCA) did not include a definition of claim. The Debt Collection Act of 1982, Pub. L. No. 97-365, which amended the FCCA, defined the term "claim," and used the terms "claim" and "debt" interchangeably. At the time of the MMS settlements, "claim" was defined as including "amounts owing on account of loans insured or guaranteed by the Government and other amounts due the Government." The Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, § 31001(z)(1)(B), has since amended the term "claim" by providing that: "the term 'claim' or 'debt' means any amount of funds or property that has been determined by an appropriate official of the Federal Government to be owed to the United States by a person, organization, or entity other than another Federal agency . . . ."

[14]31 U.S.C. § 3711(a)(1).

[15]A debtor's liability arising from a particular transaction is considered a single claim for purposes of the $100,000 limit. An agency may not subdivide a claim to avoid the monetary limit. 4 C.F.R. § 101.6.

[16]Section 4 of the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996, Pub. L. No. 104-185, 110 Stat. 1700, amended FOGRMA to provide that the "Secretary and the State concerned may take such action as is appropriate to compromise and settle a disputed obligation . . . ."

standards provide for the compromise of a claim based on inability to pay, litigation probabilities, cost of claim collection, or for more than one of these reasons.

DISCUSSION

As agreed with your office, we have reviewed a copy of two MMS settlement agreements: a settlement agreement with Exxon Company U.S.A. for $44 million, entered into in 1993, and one for $150 million with Chevron U.S.A. Inc., entered into in 1994. You were concerned whether these agreements complied with the requirement under 31 U.S.C. § 3711 for Department of Justice approval of agency compromise of claims of the Government exceeding $100,000. We are basing our views on a review of these two documents and a letter to your office dated July 23, 1997, from the U.S. Department of Justice, addressing issues you raised about these settlements in a March 12, 1997, letter to the Justice Department.

Our review of these documents shows that the Department of Justice was a party to the 1994 Chevron settlement agreement, which was approved by an Associate Attorney General. Thus, to the extent that the Chevron settlement involved agency compromise of claims of the Government exceeding $100,000, MMS received the Department of Justice approval required by 31 U.S.C. § 3711(a)(2).[17]

It is our view that the 1993 MMS settlement with Exxon should have been submitted to the Department of Justice for approval to the extent it compromised individual claims over $100,000. This settlement involved the appeals of dozens of issues, including those concerning royalty payments determined by the Department of the Interior to be owed by Exxon. Under the settlement agreement, MMS agreed to accept $44 million from Exxon, an amount apparently less than the amounts claimed in the appealed orders.

The Federal Claims Collection Standards in effect at the time defined "claim" and "debt" as "an amount of money or property which has been determined by an appropriate agency official to be owed to the United States . . . ." The term "appropriate agency official" was not defined in the Standards. The "appropriate agency official" establishing the debt needs to be identified based on the agency's delegations of authority and governing regulations.

Interior Order No. 3087, as amended, assigned all functions of the Secretary related to royalty and mineral revenue, including collections, to MMS.[18] The Order provides that MMS reports to an Assistant Secretary, who exercises Secretarial direction and

---

[17]We did not review the reasoning behind the Department of Justice's approval.

[18]48 Fed. Reg. 8983 (1983).

supervision over the MMS. Interior's regulations further provide that the Associate Director, MMS, is responsible for the functions related to royalty management, including determining royalty liability, audits of royalty payments, and collections of royalties:

> "The Associate Director is responsible for the collection of certain rents, royalties, and other payments; for the receipt of sales and production reports; for determining royalty liability; for maintaining accounting records; for any audits of the royalty payments and obligations; and for any and all other functions relating to royalty management on Federal and Indian oil and gas leases."[19]

In our view, the Associate Director, who has been delegated the authority to determine royalty claims owed to the Department of the Interior, is an "appropriate agency official" to establish a debt or claim under the Federal Claims Collection Standards.

Interior's regulations also establish an appeals system, under which decisions of officers of MMS may be reviewed, and new decisions issued, by higher levels within the Department.[20] During the appeals process, a higher level official within the Department may redetermine, based on applicable law and facts, the amount of the claim.[21] While the settlement agreement does not recite which agency official made the initial claim determination, the claims were on appeal and presumably were determined by the Associate Director, MMS, or another official otherwise delegated responsibility.

---

[19]30 C.F.R. § 201.100.

[20]43 C.F.R. part 4.

[21]43 C.F.R. § 4.5 provides that: "Nothing in this part shall be construed to deprive the Secretary of any power conferred upon him by law. The authority reserved to the Secretary includes, but is not limited to: (1) The authority to take jurisdiction at any stage of any case before any employee or employees of the Department, including any administrative law judge or board of the Office . . . and (2) the authority to review any decision of any employee or employees of the Department, including any administrative law judge or board of the Office . . . ." See Chevron Oil Co. v. Andrus, 588 F.2d 1383 (5th Cir.), reh'g denied, 591 F.2d 1343, cert. denied, 444 U.S. 879 (1979) (designation of an agency official as an authorized officer does not deprive the Secretary of the Interior the power to review or revise the officer's determination).

As discussed above, Department of the Interior officials now have statutory authority to compromise oil and gas claims. However, at the time the settlements at issue here were signed, an Interior Department official could not compromise a claim of over $100,000 that had been determined by another "appropriate agency official," i.e., accept less than the full amount owed in full satisfaction of the claim without first obtaining Department of Justice approval. Claims of lesser amounts could have been compromised if the Government could not collect the full amount because of the debtor's inability to pay the full amount within a reasonable time, if the cost of collecting the claim did not justify the enforced collection of the full amount, or if there was a real doubt concerning the Government's ability to prove its case in court for the full amount claimed, either because of the legal issues involved or a bona fide dispute as to the facts.[22]

You note the Department of the Interior represented to you its belief that at the time of the Exxon settlement, it had authority under the FOGRMA to compromise. The Department's view is that the authority to collect and the authority to adjudicate disputes at administrative levels within the agency necessarily implies the authority to compromise and settle matters in dispute before the agency. We disagree. While the term "settlement" in the litigation context means compromise, it has a different meaning in the administrative claims context. The Supreme Court has defined the term "settlement" as denoting the appropriate administrative determination with respect to the amount due.[23] Thus, to settle a claim means to administratively determine the validity of that claim.[24] Settlement includes the making of both factual and legal determinations. 20 Comp. Gen. 573, 577. The authority to settle and adjust claims does not, however, include the authority to compromise.[25] In the claims context, compromise means accepting less than the full amount owed in full satisfaction of the claim.

The 1993 MMS settlement with Exxon is a $44 million global agreement encompassing dozens of issues that were the subject of ongoing administrative proceedings. Although the agreement is entitled "Compromise and Settlement Agreement," and states that it is made for the purpose of compromising and settling claims and disputes, the agreement does not provide the amount of any individual claim or the Department of the Interior's rationale for deciding to accept an amount

---

[22]4 C.F.R. part 103.

[23]Illinois Surety Co. v. United States ex rel. Peeler, 240 U.S. 214, 219-221 (1916).

[24]Id.; Cooke v. United States, 91 U.S. 389, 399 (1875); Antrim Lumber Co. v. Hannan, 18 F.2d 548, 549 (8th Cir. 1927); 20 Comp. Gen. 573 (1941).

[25]B-200112, May 5, 1983.

less than the amount it had asserted that Exxon owed. Therefore, we cannot say definitively whether Interior compromised claims in excess of $100,000, or whether, instead, Interior actually determined on the merits that Exxon owed lesser amounts. However, the agreement states that the Department of the Interior, in good faith, contends that Exxon is liable with respect to the royalty computations and payments involved, and that Exxon, in good faith, contends that it is not liable with respect to Interior's claims. Based on the language and amount of the settlement agreement, it is likely that some claims in excess of $100,000 were settled for less than the amount Interior believed that Exxon owed, i.e., were compromised.

CONCLUSION

Although the Department of the Interior currently has specific statutory authority to compromise oil and gas claims, at the time of the matters at issue here, Interior did not have agency-specific or program-specific compromise authority. As discussed above, the 1994 MMS settlement agreement with Chevron U.S.A. Inc. received the Department of Justice approval required by 31 U.S.C. § 3711(a)(2). To the extent the 1993 MMS settlement agreement with Exxon Company U.S.A. compromised claims exceeding $100,000, that agreement should have been referred to the Department of Justice for approval.

We hope that you find this analysis useful. If we can be of further assistance, please let us know.

Sincerely yours,

Robert P. Murphy
General Counsel

September 30, 1997

DIGEST

Although the Department of the Interior currently has specific statutory authority to compromise oil and gas claims, at the time of the matters at issue here, Interior did not have agency-specific or program-specific compromise authority. To the extent that a 1993 Minerals Management Service settlement agreement with Exxon Company U.S.A. compromised royalty claims exceeding $100,000, that agreement should have been referred to the Department of Justice for the approval required by the Debt Collection Act, 31 U.S.C. § 3711.