

FLUID MINERALS BOND PROCESSING USER GUIDE

XIX. Statute of LimitationsKeywordsA. Background

Statutes of limitations are enacted by Congress and the State legislatures primarily to prevent futile civil or criminal actions by Federal and State governments. The statutes of limitations provide a reasonable time limit after which the Government will no longer take action.

STATUTE OF
LIMITATIONS
INFORMATION
AND BACKGROUND

The statutes of limitations applicable to the BLM and the MMS debt collection do not bar either agency from pursuing a debt by administrative means. The relevant statute of limitations for Federal oil and gas **royalty management** debt collection actions is now 7 years, effective August 13, 1996, and is codified at Section 115 of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq., as amended by the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (Pub.L. 104-185).

STATUTE OF
LIMITATIONS
FOR ROYALTY
MANAGEMENT
MATTERS IS NOW
7 YEARS

Section 115(b)(1) of the law now provides that for royalty management actions, rather than the standard 6-year statute of limitations provision, "A judicial proceeding or demand which arises from, or related to an obligation, shall be commenced within seven years from the date on which the obligation becomes due and if not so commenced shall be barred." The Federal Oil and Gas Royalty Simplification and Fairness Act further states in Section 115(b)(3) that "The limitations set forth in sections 2401, 2415, 2416, and 2462 of title 28, United States Code, and section 42 of the MLA (30 U.S.C. 226-2) shall not apply to any obligation to which this Act applies." Section 115(d)(3) further states that the running of the limitation period under subsection (b) of the act shall not be suspended, tolled, extended, or enlarged for any obligation for any reason by any action, other than the intentional misrepresentation or concealment of a material fact for the purpose of evading the payment of an obligation, in which case the limitation period shall be tolled for the period of such misrepresentation or such concealment.

However, the statute of limitations applicable for BLM Federal oil and gas lease operational aspects continues to be 6 years and is codified at 28 U.S.C. 2415 (1982). That section provides, in part:

STATUE OF
LIMITATIONS
FOR LEASE
OPERATIONS
IS 6 YEARS

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Keywords

"Subject to the provisions of section 2416 of this title, and except as otherwise provided by Congress, every action for money damages brought by the United States or an officer or agency thereof which is founded upon any contract express or implied in law or fact, shall be barred unless the complaint is filed within six years after the right of action accrues or within one year after final decisions have been rendered in applicable administrative proceedings required by contract or by law, whichever is later: Provided, that, in the event of later partial payment or written acknowledgment of debt, the right of action shall be deemed to accrue again at the time of each such payment or acknowledgment"

The law states that no action can be maintained in a Court of the United States; it says nothing about barring debt collection activities by the agency **not** involving the courts. There are two important reasons for not barring further action by an agency to collect debts:

First, as a legal matter, if a debtor acknowledges a debt in writing or makes a partial payment on the debt, the statute of limitations begins to run again. For example, if the BLM, after 6½ years, decides to collect a debt owed by Corporation A, it may simply send Corporation A a bill. If Corporation A acknowledges the debt by payment, partial payment, or by letter agreeing with the bill, then the BLM once again has 6 years to bring an action in court for the payment of that debt; that is, the statute of limitations in 28 U.S.C. 2415(a) (1982) begins to run again.

ACKNOWLEDGEMENT
OF DEBT AFTER
END OF 6-YEAR
STATUTE OF
LIMITATIONS
STARTS 6-YEAR
CLOCK AGAIN

Second, the nature of the company's holdings is a factor. For example, assume that Corporation A is a large, multi-national oil company holding interest in several Federal leases. In all likelihood, that company will pay the bill without question because, (1) the company wants to maintain its reputation as a "good citizen," and (2) the people in that corporation know they have to do substantial business in the future with the BLM. The corporation does not wish to jeopardize its future working relationship with the BLM.

For a contrasting example, assume that a corporation had only one Federal lease in its extended term with marginal production which ceased production 7 years ago. The corporation is now defunct. Pursuing the plugging and restoration debt is impractical because collection is unlikely.

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Responsible Official	Step	Action	Keywords
		17d. Enter Action Date: Future action suspense date when restoration of bond to required or increased amount is due; DE 2960/2910 Action Code 247; Action Remarks: Restoration of bond required to full face amount or an increased amount.	
Adjudication	18	If the bond is brought back up to the face amount required, prepare a notice acknowledging the restoration.	BOND RESTORATION
	19.	If a new replacement bond is filed, follow the replacement bond procedures (see Section XIV, above).	
ABSS Entry ALMRS Entry	20	Enter into the ABSS and, if an individual bond, in Case Recordation	AUTOMATED NOTATION
	20a.	Enter Action Date: Date bond adjustment is received; DE 2960 Action Code 464/DE 2910 Action Code 478; Action Remarks: Effective date (MM/DD/YYYY).	
Adjudication	21.	If the default is not corrected to the satisfaction of the MMS, prepare a decision to the surety and principal/obligor stating that judicial action is being initiated by the BLM to cancel the lease due to the nonpayment of the demand on the bond (see Illustration 70).	DEFAULT NOT CORRECTED
	22.	Prepare a memorandum to the appropriate Solicitor and forward the case for judicial action, providing all the background information (see Illustration 71).	REFER DEFAULT CASE TO SOLICITOR
ABSS Entry ALMRS Entry	23.	Enter into the ABSS and, if an individual bond, in Case Recordation.	AUTOMATED NOTATION

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Responsible Official	Step	Action	Keywords
	23a.	Enter Action Date: Date litigation is filed; DE 2960 Action Code 736/DE 2910 Action Code 148; Action Remarks: Civil action number and note that this is a BLM action on the surety/principal/obligor for nonpayment on default; and	
	23b	Enter Action Date: Date case is sent to the Solicitor's Office for litigation action; DE 2960 Action Code 960/DE 2910 Action Code 042; Action Remarks: Solicitor's Office; General Remarks: Pending judicial action on bond demand.	
Adjudication	24.	If the surety failed or refused to make the default payment under the bond, prepare a letter to the Department of the Treasury, Surety Bond Branch, 401 14th Street, S.W., Washington, D.C. 20027, advising it that the surety has failed to render payment under the bond, and request the Treasury Department to take action to decertify the surety (see Illustration 69).	DECERTIFICATION OF SURETY REQUEST TO DEPARTMENT OF THE TREASURY

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An important qualification to the information discussed above is contained in 28 U.S.C. 2416(c) (1982) which provides, in part:

". . . [F]or the purpose of computing the limitations periods established in section 2415, there shall be excluded all periods during which . . . facts material to the right of action are not known and reasonably could not be known by an official of the United States charged with the responsibility to act in the circumstances;"

MATERIAL
FACTS NOT
REVEALED
BY ENTITY

If, for example, Corporation B sends information to the BLM that reveals a debt, and the BLM fails, through lack of budget, low priority, or other reasons, to pursue the debt in court for 8 years, the United States is barred from collecting the debt by an action in court (but **not** by other means discussed above). If, however, Corporation B conceals the facts which would put the BLM on notice of the debt or infraction, the statute of limitations does not begin to run until the BLM discovers the facts, even if this is many years later.

DEBT PURSUIT
IN COURT
BARRED WHEN
AGENCY FAILS
TO ACT ON
KNOWN FACTS

The difficulty with this statutory section is in deciding whether the BLM "knew or should have known" of the debt. If the debtor has submitted the correct reports, but the BLM has misfiled them without taking action, clearly the statute of limitations will continue to run because the BLM "knew or should have known" of the debt or infraction.

The exception for fraud means that, if the person gave false information or concealed the true information about a case, the statute of limitations does **not** begin to run until the correct information becomes known.

FRAUD
EXCEPTION
PROVISIONS

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B. Relationship to Collections Under Bond

If a bond is still active, payment can be demanded under it for deficiencies more than 6 years old. Also, payment can be demanded **after** the period of liability of a bond has been terminated due to the fact that terminating the period of liability of the bond only means that no **new** cause of action may accrue.

A bond is a contract which must be construed in accordance with the terms of the contract and the intent of the parties. Where a bond is given to ensure a statutory obligation, it is known as a statutory bond. The terms of the statute and implementing regulations are considered to be incorporated into and are considered a part of the contract because the obvious purpose of the bond is to ensure the faithful performance of all obligations and conditions by the party obtaining the bond.

When the BLM determines, to the extent that it is able, that the terms and conditions of the lease(s) have been met, it terminates the period of liability of the bond; i.e., it sets a specific time after which no new liability may accrue. This termination of the period of liability by the BLM does not mean that the surety may deny liability for a cause of action accruing **before** termination of the period of liability. For example, Company A plugged and abandoned a gas well in 1985 and the Field Office Fluid Mineral Operations determined at that time that the terms of the lease had been met. The period of liability of the bond was released in 1986 and the lease expired in 1987. However, adverse effects of improper plugging and abandonment of the gas well did not become manifest until 1993. Company A is liable because the improper plugging activities occurred during the term of the bond under its former lease. Company A's surety also will be liable because its liability is co-extensive with that of the principal, i.e., the surety is not relieved of liability for improper activities that occurred during the period the bond was in effect, but whose adverse effects do not manifest themselves until after the period of liability of the bond was terminated. Moreover, the applicable statute of limitations would not begin to run until 1993 when the BLM was actually aware or should have been aware of the adverse effects of the improper plugging activity.

Portions of the above information are taken from the joint BLM-MMS report entitled Collection under Bonds of Royalty-Related Obligations for Onshore Fluid Mineral Leases, prepared by the Fluid Bonding Task Group, April 1988. Refer to this BLM-MMS report for additional, more detailed information on this subject.

Keywords

STATUTE OF
LIMITATIONS
RELATED TO
BOND
COLLECTION

JOINT BLM-MMS
TASK FORCE
REPORT OF
APRIL 1988