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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Office of Natural Resources Revenue—Disbursement of Mineral Royalties

File: B-321729

Date: November 2, 2011

DIGEST

The Department of Interior's Office of Natural Resources Revenue may disburse to Cook Inlet Region, Inc. (CIRI), an Alaska corporation, funds it received in the resolution of two court actions involving mineral leases where such funds represent royalty payments due to CIRI. When funds received by a federal agency do not represent "money for the Government," the miscellaneous receipts statute, 31 U.S.C. § 3302(b), does not apply, and such funds may be disbursed to CIRI without the need for an appropriation.

DECISION

A Certifying Officer of the Department of Interior's (DOI) Office of Natural Resources Revenue (ONRR) has requested an advance decision under 31 U.S.C. § 3529 on whether royalties collected by the federal government in connection with the resolution of two court actions involving mineral leases constitute "money for the Government," or whether such royalties may be disbursed to CIRI without the need for an appropriation. *See* U.S. Const., Art. I, § 9, cl. 7; 31 U.S.C. § 3302(b); Letter from Certifying Officer, ONRR, to GAO (Mar. 1, 2011) (Request Letter). ONRR explains that such funds represent the portion of mineral royalties due to CIRI for gas extracted from leases in which both the federal government and CIRI have an interest. *Id.* As we explain below, ONRR may disburse the funds in question to CIRI.

Our practice when rendering decisions is to obtain the views of the relevant agency to establish a factual record and the agency's legal position on the subject matter of the request. GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), *available at* www.gao.gov/legal/resources.html. The record in this case consists of the Request Letter, the settlement agreement in *United States, ex rel. Harrold E. Wright v.*

AGIP Petroleum Co., et al., No. 5:03-CV-264 (filed Aug. 2, 1996, E.D. Tex.) (Settlement Agreement), and several telephone conferences with and e-mails from the Chief, Alternative Dispute Resolution, Office of Enforcement, ONRR.

BACKGROUND

This decision concerns the receipt of moneys by ONRR on behalf of CIRI as a result of two independent court actions: a federal bankruptcy petition by a mineral lease operator and a civil suit filed under the False Claims Act (FCA), 31 U.S.C. §§ 3729–3733, alleging fraudulent conduct in the payment of mineral royalties. Each action involved a mineral lease in which the federal government and CIRI are entitled to mineral royalties (a "mixed-interest" lease). If the amounts collected constitute "money for the Government," such funds must be deposited in the Treasury of the United States as required by 31 U.S.C. § 3302(b), the miscellaneous receipts statute.

CIRI is one of twelve land-owning Alaska Native regional corporations created pursuant to the Alaska Native Claims Settlement Act (ANCSA).[1] Congress enacted ANCSA to settle the aboriginal land claims of Alaska Native people by, among other things: (1) providing for the formation of for-profit regional corporations under Alaska state law; (2) mandating the issuance of stock in such corporations to Alaska Natives; and (3) conveying public lands and cash to such corporations.[2] 43 U.S.C. §§ 1601, 1606, 1613.

The land conveyed to the regional corporations under ANCSA remained subject to any valid rights pertaining to the surface and subsurface estates, such as mineral leases, that existed at the time the land was conveyed.[3] 43 U.S.C. § 1613(g). The regional corporations assumed all interests of the United States as lessor in any such existing mineral leases attendant to the land conveyed. 43 U.S.C. §§ 1613(f), 1613(g). Where an existing mineral lease pertained to an area of land partially conveyed to a regional corporation and partially owned by the United States, the

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[1] Pub. L. No. 92-203, 85 Stat. 688 (Dec. 18, 1971), *codified, as amended, at* 43 U.S.C. §§ 1601–1629h.

[2] ANCSA also provided for the formation of Native Village Corporations, which also received land and cash in settlement of aboriginal land claims. *See* 43 U.S.C. §§ 1607, 1610 and 1613.

[3] "All conveyances made pursuant to [ANCSA] shall be subject to valid existing rights. Upon issuance of the patent, the patentee shall succeed and become entitled to any and all interests of . . . the United States as lessor, contractor, permitter, or grantor, in any such [existing rights.]" 43 U.S.C. § 1613(g). A "patent" is a conveyance of title to land that has been surveyed whose boundaries have been confirmed. *See* 43 C.F.R. § 2650.0-5(i).

United States retained a partial interest in such mineral lease. In such cases, the regional corporation is entitled to a proportionate share of mineral royalties. 43 U.S.C. 1613(g). As discussed in more detail below, two such mixed-interest leases are implicated in the court actions at issue here.

Bankruptcy Petition: In March 2009, Pacific Energy Resources Ltd. and certain of its affiliated companies (Debtors) filed a voluntary petition under Chapter 11 of the Bankruptcy Code. The Debtors were mineral lease operators that were in default under several mineral leases, including a U.S.-CIRI mixed-interest lease, for failure to make royalty payments. In the bankruptcy proceeding, the Debtors sought to sell the leasehold interest in the mixed-interest lease. *See* Debtors Motion for an Order: (A) Vacating This Court's Abandonment Order in Part for Certain Alaska Assets and (B) Authorizing the Debtors to Sell Such Assets to Cook Inlet Energy, LLC at ¶ 32, *In re Pacific Energy Resources Ltd., et al.*, No. 09-10785 (Bankr. D. Del. Nov. 25, 2009). In order to consummate the sale, the Debtors first had to cure the existing default under the mixed-interest lease by paying all outstanding mineral royalties due to the United States and CIRI (referred to as the "cure amount"). *See* 11 U.S.C. § 365. Pursuant to a court order, the United States Department of Justice (DOJ), as representative of the United States, received the cure amount paid by the Debtors, including the portion of the royalties due to CIRI. May 16 E-mail.

Federal Claims Act Suit: In 1996, a third party relator filed an FCA suit against a mineral lease operator of mineral leases in which the United States and CIRI were entitled to royalty payments.[4] The relator alleged that the mineral lease operator had engaged in accounting schemes and other undervaluation techniques that resulted in the understatement of royalties due for gas, gas plant products and downstream condensate. Settlement Agreement, Recital E. The defendants made a cash payment to DOJ in settlement of the claims raised in the FCA suit. Request Letter at 1.

In both the bankruptcy and FCA cases, DOJ transferred to ONRR the amounts it had received on behalf of CIRI—$439,211.98 and $54,429.31, from the bankruptcy proceeding and from the FCA civil suit, respectively. E-mail from Chief, Alternative Resolution, Office of Enforcement, ONRR, DOI, to Senior Attorney, GAO (Sept. 21, 2011) (September 21 E-mail). ONRR deposited the payments into a custodial account in the U.S. Treasury that ONRR regularly utilizes to receive and disburse royalty payments as an administrator of mineral leases. E-mail from Chief,

[4] The False Claims Act authorizes the filing of a civil law suit by DOJ or by a private individual, known as a relator, to recover damages from a defendant who is alleged to have presented a false claim to the United States or who has conspired to defraud the Government. 31 U.S.C. §§ 3730(a), 3730(b). The relator is entitled to a share of the damages recovered.

Alternative Resolution, Office of Enforcement, ONRR, DOI, to Senior Attorney, GAO (Sept. 22, 2011).

ANALYSIS

At issue here is the nature of the moneys recovered by the federal government in the two court actions—specifically, whether such funds constitute money for the government.

Under the miscellaneous receipts statute, "an official or agent of the Government receiving *money for the Government* from any source shall deposit the money in the Treasury as soon as practicable without deduction for any charge or claim." 31 U.S.C. § 3302(b) (emphasis added). In addition, the Appropriations Clause of the U.S. Constitution provides that "no Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law." U.S. Const. art. I, § 9, cl. 7. The Appropriations Clause applies to public funds required to be deposited into the U.S. Treasury. *See Emery v. United States*, 186 F.2d 900 (9th Cir. 1951).

Funds are received for the United States if they are to be used to bear the expenses of the government or to pay the obligations of the United States. *See* B-205901, May 19, 1982.[5] "The mere fact that moneys are received by a federal agency in the exercise of its lawful functions does not necessarily mean that those moneys are received for the use of the United States" and, therefore, must be deposited in the U.S. Treasury and withdrawn only by an appropriation. *Id.* Occasionally a government agency will receive money that is not "money for the Government," such as when the government has received the money for the benefit of another. In those instances, neither the miscellaneous receipts statute nor the Appropriations Clause is implicated. *See*, *e.g.*, *United States v. Aiello*, 912 F.2d 4, 7 (2nd Cir. 1990) ("We do not believe that funds collected by the United States pursuant to a judgment of the District Court are insulated by the Appropriations Clause from return to the rightful owner in the event of a reversal of that judgment simply because the funds are held in the U.S. Treasury during the course of the litigation."); *Emery*, 186 F.2d at 902 (money paid to the United States under court order as refund of overcharges by persons who had violated rent control laws was held in trust for tenants and could be disbursed to them without need for an appropriation), *cert. denied*, 341 U.S. 925 (1951); 60 Comp. Gen. 15, 26-27 (1980) (money paid into an escrow account under the control of the Department of Energy pursuant to a consent order to resolve violations of oil price and allocation regulations would not violate the miscellaneous

[5] Although B-205901 applied a prior version of the miscellaneous receipts statute, 31 U.S.C. § 484, the statute has remained essentially unchanged since its enactment. The codification of title 31 of the United States Code changed "money for the use of the United States" to "money for the Government." The codification revised and restated existing laws in title 31 without substantive change. Pub. L. No. 97-258, § 4, 96 Stat. 877, 1067 (Sept. 13, 1982).

receipts statute, if the Department received the funds to redistribute to overcharged customers pursuant to its remedial authority).

ANCSA requires that the mineral leases assumed by the regional corporations as a result of the land conveyance are to be administered by the United States. 43 U.S.C. § 1613(g). In addition, under the Federal Oil and Gas Royalty Management Act of 1982[6] (FOGRMA), the Secretary of the Interior has responsibility for ensuring the timely collection of oil and gas royalties due from leases on federal and Indian lands, including leases administered by the United States under ANCSA.[7] *See* 30 U.S.C. § 1711(a). FOGRMA requires lessees to make royalty payments in the time and manner specified by the Secretary. 30 U.S.C. § 1712(a).

ONRR is the division within DOI that is responsible for the accurate collection and disbursement of all royalty payments and all other functions relating to royalty management on Federal and Indian oil and gas leases, including the mixed-interest mineral leases implicated in the court actions at issue here. 30 C.F.R. § 1201.100; E-mail from the Chief, Alternative Dispute Resolution, Office of Enforcement, ONRR, to Senior Attorney, GAO, *Subject: CIRI Funds Factual Summary* (May 16, 2011) (May 16 E-mail). Accordingly, ONRR ensures that entities entitled to royalty payments receive such payments, either by collecting royalty payments from mineral lease operators and disbursing them to the appropriate entities or by directing mineral lease operators to make royalty payments directly to the regional corporation. *See* 30 U.S.C. §§ 1711–1714; 43 U.S.C. § 1613(g); 30 C.F.R. § 1201.100; Telephone Conversation with Chief, Alternative Resolution, Office of Enforcement, ONRR, DOI (Sept. 16, 2011) (September 16 Conversation); May 16 E-mail.

According to ONRR, the funds at issue here represent royalty payments due to CIRI under mixed-interest leases. Exercising authority under FOGRMA, ONRR had directed the mineral lease operators of the mineral leases at issue in these two cases to make royalty payments directly to CIRI. Solely as a result of the resolution of litigation, royalty payments due and payable to CIRI under these mixed-interest mineral leases were remitted to DOJ, which, in turn, transferred such amounts to ONRR, the office responsible for collecting and disbursing royalties related to Federal and Indian leases. 30 C.F.R. § 1201.100. The mere fact that moneys were received by a federal agency in the exercise of its lawful functions, and, as a result, not paid directly to CIRI per the established practice, does not change the character of the funds as lease royalties belonging to CIRI. Here, first DOJ, and then ONRR,

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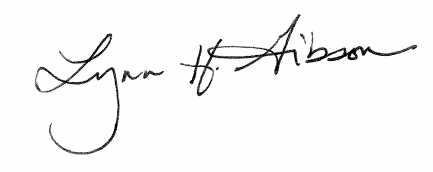
[6] Pub. L. No. 97-451, 96 Stat. 2449 (Jan. 12, 1983), *codified*, *as amended*, *at* 30 U.S.C. §§ 1701–1757.

[7] The term “Indian lands” includes any lands or interest in lands which is administered by the United States pursuant to ANCSA. *See* 30 U.S.C. § 1702(3).

received such funds not for the use of the United States, but rather, as custodian for the benefit of CIRI. Accordingly, the miscellaneous receipts statute does not apply and ONRR should disburse such funds to CIRI without the need for an appropriation.[8]

CONCLUSION

The royalties that ONRR holds as a result of the resolution of two court actions represent payments due and owing to CIRI under ANCSA. Such funds do not constitute "money for the Government"; therefore, the miscellaneous receipts statute does not apply and the funds may be disbursed without the need for an appropriation.



Lynn H. Gibson
General Counsel

[8] The facts here are distinguishable from previous cases in which we have addressed the disposition of *damages* recovered by DOJ under the False Claims Act. *See*, *e.g.*, B-310725, May 20, 2008; B-281064, Feb. 14, 2000. There, we have held that agencies may retain the portion of the damages representing amounts erroneously disbursed by the agency due to the false claim; however, the balance of the damages recovered must be deposited into the general fund of the U.S. Treasury as miscellaneous receipts. B-310725; B-281064. Here, the amounts at issue represent royalties required to be paid to CIRI.