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J. E. Keating
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DECISION


 THE COMPTROLLER GENERAL
 OF THE UNITED STATES
 WASHINGTON, D. C. 20548

FILE: B-203446

DATE: January 28, 1982

 MATTER OF: Department of Interior—Refunds to Intermountain
 Power Project.

DIGEST: Department of Interior was ordered by a court to refund money which the court determined Interior erroneously collected. The funds collected by Interior during fiscal years 1978 through 1981 were deposited into a special account in the Treasury and were appropriated by the Congress. Refunds for these years should be made from this appropriation. The funds collected prior to fiscal year 1978, however, were deposited into the Treasury as miscellaneous receipts. Refund of these collections must be from the appropriation created by 31 U.S.C. § 725q-1 as there is no other specific appropriation or account available for this purpose.

The Department of the Interior requests a decision regarding the proper appropriation to use to pay refunds to the members of the Intermountain Power Project as ordered by the United States District Court for the District of Utah. See Beaver, Bountiful, Enterprise v. Andrus, No. C-76-227 (D. Utah, September 28, 1979), aff'd, 637 F.2d 749 (10th Cir. 1980). The Intermountain Power Project (IPP) is a non-profit corporation formed and organized by cities and towns in Utah and California to build power plants. The location of one of its proposed power plants was intended to be on Federal land administered by the Bureau of Land Management, a part of Interior. Before IPP could build the power plant on this land it had to obtain a right-of-way permit from Interior. As a condition for granting the permit, Interior charged a fee to IPP to offset the costs incurred in processing the application. The fee was collected during the fiscal years 1975 through 1981. It was this fee that the district court ordered refunded.

For the reasons indicated below, we conclude that the portion of the charge collected by Interior between fiscal years 1978 and 1981, which was deposited in a special account in the Treasury and was appropriated by the Congress, may be refunded from this appropriation. That part of the charge which was collected between fiscal years 1975 and 1977 and deposited in the Treasury as miscellaneous receipts must be refunded from the appropriation for moneys erroneously received and covered, established by 31 U.S.C. § 725q-1.

Under the Federal Land Policy and Management Act of 1976 (FLPMA), the Secretary of the Interior is authorized to recover costs incurred in processing applications for right-of-way permits. 43 U.S.C. § 1764(g).

The Act further provides that the Secretary need not recover these costs from state or local governments securing the right-of-way for the public interest. *Id.* Under the statute which preceded the FLPMA, the Public Lands Administration Act, Pub. L. No. 86-649, 74 Stat. 506 (PLAA), the Secretary was also authorized to recover the costs of processing applications.

During the period in which Interior was collecting the fee from IPP, its regulation implementing the fee provision both under the PLAA and the FLPMA stated:

"(a)(1) An applicant for a right-of-way or a permit incident to a right-of-way shall reimburse the United States for administrative and other costs incurred by the United States in processing the application, including the preparation of reports and statements pursuant to the National Environmental Policy Act (42 U.S.C. 4321-4347), before the right-of-way or permit will be issued under the regulations of this part.

"(2) The regulations contained in this section do not apply to: (i) State or local governments or agencies or instrumentalities thereof where the lands will be used for governmental purposes and the lands and resources will continue to serve the general public, except as to rights-of-way or permits under Section 28 of the Mineral Leasing Act of 1920, as amended (87 Stat. 576); (ii) road use agreements or reciprocal road agreements; or (iii) Federal government agencies." 43 C.F.R. § 2802.1-2 (1976) (superceded).

In 1975, after analyzing IPP's application for a right-of-way permit, Interior determined that IPP did not qualify for the exemption from reimbursing processing costs contained in the regulations, and therefore Interior assessed IPP for the costs of processing its application. Subsequently, Interior's Bureau of Land Management collected a total of \$907,286.12 from IPP. Of this total amount, \$478,058.80 was collected by the Bureau during fiscal years 1975 through 1977, and deposited into the Treasury's General Fund Account (142499 Other Fees and Charges for Miscellaneous Services). Between fiscal year 1978 and February 28 of fiscal year 1981, \$429,277.32 was collected by the Bureau and deposited into a special deposit account (14x5017 Service Charges, Deposits and Forfeitures).

IPP protested the imposition of these fees and it brought an action seeking to overrule the decision by Interior. In 1980, the Tenth Circuit Court of Appeals, upholding a district court ruling, held that pursuant to either the FLPMA or the FLAA, and the implementing regulations, IPP was not required to reimburse Interior for any cost Interior incurred in processing IPP's application. Beaver, Bountiful, 637 F.2d 749, supra. Accordingly, the court ordered Interior to refund to IPP from applicable funds the fees which it determined were erroneously collected.

The rule for determining which appropriation is properly chargeable for a refund of money erroneously collected is set forth in our decision at 17 Comp. Gen. 859 (1938). This decision states:

"When the amount subject to refund can be traced as having been erroneously credited to an appropriation account the refund claim is chargeable to said appropriation whether it be lapsed or current, or reimbursable or nonreimbursable. * * * It is only when collections erroneously covered into the Treasury as miscellaneous receipts are involved and the refund is not properly chargeable to any other appropriation that there is for consideration charging the appropriation 'Refund of moneys erroneously received and covered.'" Id. at 860.

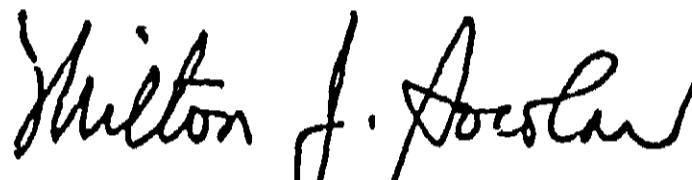
In this case, the record shows that \$429,277.32, which was erroneously collected by the Bureau between fiscal year 1978 and fiscal year 1981, was credited to the account 14x5017 Service Charges, Deposits and Forfeitures. This procedure was in accord with Section 504(g) of the FLPMA, 43 U.S.C. § 1764(g), which provides that fees received by Interior as reimbursement for costs it incurs in processing applications for right-of-way permits are to be deposited "with the Treasury in a special account" from which funds are authorized to be appropriated. The Congress has appropriated these funds to be "immediately available until expended." E.g., Department of the Interior and Related Agencies Appropriation Act, 1980, Pub. L. No. 96-126, 93 Stat 954, 955. The FLPMA also states that any amount collected in excess of that required by law is to be refunded from applicable funds. 43 U.S.C. § 1734(c). The applicable funds to use for the refunding of the \$429,277.32 collected during fiscal years 1978 through 1981 are the funds which were appropriated from the account to which the money was erroneously deposited. See 17 Comp. Gen., supra, at 860.

For the \$478,058.80 erroneously collected by the Bureau prior to fiscal year 1978 a different result is necessary. These funds were not collected pursuant to the FLPMA, but rather were collected pursuant to

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the PLAA. Since the PLAA did not authorize these funds to be deposited into a special account, they were deposited into a miscellaneous receipts account (142499 Other Fees and Charges for Miscellaneous Services).

As stated above, when moneys are erroneously deposited into the Treasury as miscellaneous receipts, the appropriation "Refund of money erroneously received and covered" is to be used to refund these moneys unless there is a specific appropriation available for such refunds, 17 Comp. Gen., supra, at 860. We have found no such specific appropriation available for refunding these sums. Accordingly, the appropriation account created by 31 U.S.C. § 725q-1 entitled "Refund of moneys erroneously received and covered" is to be used to refund the amount erroneously collected by the Bureau during fiscal years 1975 through 1977.



Acting Comptroller General
of the United States