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DECISION

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

FILE: B-164613 DATE: June 17, 1982

MATTER OF: State of Utah—Entitlement to oil shale lease revenues

DIGEST: The State of Utah is entitled to 37-1/2 percent of judicially impounded revenues from two 1974 oil shale leases plus a 37-1/2 percent share of accumulated interest during the period of litigation when its share of the lease revenues was unavailable to the State. Utah's right to 37 1/2 percent of the funds vested at the time the funds were impounded and was not affected by subsequent legislative changes of the distribution formula which have a prospective effect only.

In April 1974, the United States District Court for the District of Utah ordered that, during the pendency of certain litigation between the Secretary of the Interior and the State of Utah, all monies received by the Secretary under the Federal prototype oil shale leasing program in the State of Utah were to be deposited with the registry of the court. When the litigation which gave rise to this impoundment was resolved in Andrus v. Utah, 446 U.S. 500 (1980), the district court ordered the release to the Department of the Interior of the impounded funds which, including interest, amounted to nearly $129 million dollars. The Bureau of Land Management of the Department of the Interior seeks our decision as to what percentage of the funds it should pay to the State of Utah under the provisions of section 35 of the Mineral Lands Leasing Act of 1920, 30 U.S.C. § 191 (1975). The question arises because, during the period of the impoundment, the provisions of section 35 were amended by Congress in such a way as to increase the State share of the revenues collected under oil shale leases under the Mineral Lands Leasing Act from 37-1/2 percent to 50 percent. See, e.g., Federal Land Policy and Management Act of 1976, Pub. L. No. 94-579, § 317, 90 Stat. 2743, 2770-2771 (1976). For the reasons which follow, we conclude that Utah is entitled to 37-1/2 percent of the funds impounded by the court, plus the interest earned on that amount during the period of the impoundment.

FACTS

When Utah became a State in 1896, Congress granted certain lands from those owned by the United States to Utah for the support of public schools. Congress also provided that if any of the granted Federal lands proved to have been disposed of by the United States, then Utah might make "indemnity selections." Indemnity selections are equivalent Federal lands situated in Utah and chosen by the State to

replace those of the granted lands which were unavailable. See Utah Enabling Act of 1894, 28 Stat. 109. In the period between September 10, 1965, and November 17, 1971, Utah filed 194 indemnity selections covering 157,255.90 acres of Federal land situated in Utah. Because the Secretary of the Interior had not acted upon Utah's indemnity selections, and was indicating that he might reject some of those selections, Utah filed suit in 1974 to compel the Secretary of the Interior to approve Utah's selections and to pass title to the State of Utah.

Prior to the commencement of the litigation, the Department of the Interior had initiated a prototype oil shale leasing program pursuant to the provisions of the Mineral Lands Leasing Act of 1920, as amended, 30 U.S.C. §§ 181, et seq. (1970). Under this program, Federal lands were leased to developers for the extraction of oil from shale mineral deposits. At that time, section 35 of the Mineral Lands Leasing Act provided:

> "All money received from sales, bonuses, royalties, and rentals of public lands under the provisions of this chapter shall be paid into the Treasury of the United States; 37 1/2 per centum thereof shall be paid by the Secretary of the Treasury as soon as practicable after December 31 and June 30 of each year to the State within the boundaries of which the leased lands or deposits are or were located* * *." 30 U.S.C. § 191 (1970) (emphasis added).

Some of the lands included in the shale leasing program were also included among Utah's indemnity selections. In other words, Utah claimed title to them. In a pretrial agreement with the Secretary of the Interior, Utah agreed not to oppose the leasing of these lands under the Federal shale oil leasing program during the pendency of the litigation. The agreement was necessary because the litigation would determine whether Utah or the United States owned the lands and, without the agreement, it was unlikely that many persons would bid on the oil shale leases for fear that, should Utah win, the leases would not be honored. Under the agreement, the State of Utah agreed not to oppose the Federal leasing program, and that, should the courts determine that Utah's indemnity selections were enforceable (i.e., that the lands subject to the leasing program belonged to Utah), Utah would honor and be bound by the terms and conditions of the Federal oil shale leases.

In March 1974, the Bureau of Land Management awarded leases for two tracts (designated "U-A" and "U-B") of federally-owned land, situated in Utah and subject to Utah's indemnity selection claims. On April 5, 1974, the United States District Court for the District of Utah granted a motion by Utah to impound, pending completion of the litigation, "all monies receive[d] [by the Secretary of the Interior]

from the successful bidders on the Federal Government's prototype oil shale leasing program" in Utah. Under the court's order, those funds were required to be deposited by the Secretary into the registry of the court, and were then invested in interest bearing notes by local banks. For the next 2 years, deposits were made by the Secretary into the court's registry as payments from the lessees were received. Since the lessees' payments were in the form of checks payable to the Bureau of Land Management, the appropriate officials simply endorsed and deposited each check with the court. The last such deposit was made on June 1, 1976.

On June 8, 1976, the district court rendered judgment on the indemnity selections in favor of Utah. Findings of Fact, Conclusions of Law, and Decree, Utah v. Kleppe, Civ. No. C-74-64 (D. Utah, June 8, 1974). That decision was affirmed on August 8, 1978, by the United States Court of Appeals for the Tenth Circuit. Utah v. Kleppe, 586 F.2d 756 (1978). However, on May 19, 1980, the district and appeals courts' decisions were reversed by the United States Supreme Court in favor of the Secretary of the Interior. Andrus v. Utah, supra. Accordingly, on October 30, 1981, the district court dissolved its impoundment order and ordered the release to the Secretary of the Interior of approximately $72 million in oil shale lease bonus and rental payments, plus $56 million in accumulated interest.

In 1976, during the pendency of the litigation, section 35 of the Mineral Lands Leasing Act was amended three times, and the formula for how revenues received under that Act are to be divided between the Federal and State governments was altered. On October 21, 1976, the last of these amendments, the Federal Land Policy and Management Act of 1976, 90 Stat. 2743, 2770, changed section 35 to read as follows:

> "All money received from sales, bonuses, royalties, and rentals of the public lands under the provisions of this Act * * * shall be paid into the Treasury of the United States; 50 per centum thereof shall be paid by the Secretary of the Treasury as soon as practicable after March 31 and September 30 of each year to the State other than Alaska within the boundaries of which the leased lands or deposits are or were located* * *." 30 U.S.C. § 191 (1976) (emphasis added).

The Bureau of Land Management asks whether Utah should receive 50 percent of the revenues, as provided by the statute as currently worded, or 37-1/2 percent of the revenues, as provided by the statute as it was worded when the monies were paid by the lessees.

DISCUSSION

The State of Utah claims that under the amended language, it is entitled to 50 percent, rather than 37-1/2 percent, of the funds which

were impounded by the district court. To support this claim, Utah argues that the funds impounded by the court were not "received" within the meaning of the statute until after the date of the amendment, because section 35 requires such funds to be deposited into the Treasury upon receipt by the Secretary of the Interior. Since these funds were not deposited into the Treasury until after the district court dissolved its impoundment order in 1980, Utah reasons that the funds were not "received" until then.

The Bureau of Land Management on the other hand, argues that the Department of the Interior "received" the disputed funds when the Bureau took physical possession of the lessees' checks in payment of their lease obligations. The Bureau concludes that these funds were received prior to the 1976 amendments and their distribution should be governed by the law in effect at the time of receipt.

Although Utah and the Bureau have concentrated their arguments on the meaning and timing of the "receipt" of these funds by the Secretary of the Interior, the resolution of that dispute is not dispositive of the issue in this particular case. Neither, for that matter, are the dates of deposit or distribution of these funds controlling in this case. In the normal course of events, had there been no impoundment order, the revenues under these leases would have been received, deposited, and distributed in accordance with the provisions of section 35, prior to the enactment of the 1976 amendments. In other words, but for the impoundment, Utah would clearly have received 37 1/2 percent of the lease revenues.

The effect of the law suit and the ensuing impoundment order was to freeze the pecuniary entitlements of the parties as of the time the order was issued. At that time, the sole issue was whether the State of Utah was the owner of all the lands in issue and therefore entitled to 100 percent of the lease revenues placed in escrow--or whether these same lands belonged to the United States (in which case Utah was entitled only to 37-1/2 percent of the revenues). We do not see how later amendment of the apportionment formula can reasonably be viewed as affecting the resolution of this case. To conclude otherwise would be to hold that had amendment of the Act lowered State entitlement to, say, 25 percent, instead of raising it to 50 percent, the State of Utah's portion of the escrow funds would necessarily have been diminished proportionately. We do not subscribe to such a view, nor do we find anything in the Act or its legislative history that persuades us that a legislative increase in a state's share should be treated differently from a decrease.

Neither does the legislative history indicate that Congress intended its 1976 amendments to be applied retrospectively. On the contrary, there are indications in the legislative history that Congress expected that those amendments would have a prospective application.

See, e.g., 122 Cong. Rec. 25213 (1976) (Remarks of Senator Moss decrying the loss to Utah of the increased revenues to which Utah would have been entitled if a previous year's bill had not been vetoed by the President.)

For the above reasons, we conclude that the oil shale lease revenues which were impounded by the courts are not subject to the 1976 amendments which changed the formula for distributing lease payments from 37-12 percent to 50 percent. Utah is entitled to 37-1/2 percent of the revenues released by the district court on October 30, 1981, plus the interest accumulated on its share during the period that the funds were impounded by the court.

Milton J. Socolar

Acting Comptroller General
of the United States