DECISION

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

31833

FILE: B-215394 DATE: August 1, 1985

MATTER OF: Bureau of Land Management - Trans-Alaska Pipeline Project--Claims for right-of-way cost overcharges

DIGEST:

The Department of the Interior may, under authority of 43 U.S.C. § 1734(c), repay the Alyeska Pipeline Service Company amounts equivalent to the fair market value of equipment (originally paid for by Alyeska) no longer needed by the Department to monitor the Trans-Alaska Pipeline Project, to the extent it determines that fair market value at time of disuse accurately reflects the amounts overpaid by Alyeska under the fee-collection provisions of the Mineral Leasing Act Amendments of 1973 (30 U.S.C. § 185(1)) and the implementing right-of-way agreement. The appropriate funding source for such repayments would be the permanent appropriation for refund of money erroneously received and covered into the Treasury.

This is in response to a request by the Chief, Division of Finance, Bureau of Land Management, United States Department of the Interior, for guidance concerning claims made by the Alyeska Pipeline Service Company (Alyeska) for the reimbursement of the residual value of equipment no longer used by the Department of the Interior to administer an Agreement and Grant of Right-of-Way for a Trans-Alaska Pipeline.

BACKGROUND

In 1974, the Department of the Interior entered into an agreement with a consortium of seven companies, represented by Alyeska, granting a right-of-way for the construction, operation, maintenance, and termination of a Trans-Alaska pipeline. The right-of-way is being administered by the Bureau of Land Management (BLM) in conjunction with the Fish and Wildife Service, the National Marine Fisheries Service, and the United States Geological Survey. In section 12 of the agreement, Alyeska agreed to reimburse the Department of the Interior for all reasonable administrative and other costs incurred directly or indirectly by those agencies in processing applications filed in connection with the Pipeline System and in monitoring the right-of-way. These costs are billed and collected by BLM, which subsequently reimburses the other agencies for their expenses.

032717

Several months after the agreement became effective, BLM and Alyeska informally agreed to an arrangement for the reimbursement to Alyeska for equipment no longer needed to administer the right-of-way. From the record before us, it appears that the arrangement provides for Alyeska to pay the Department of the Interior the full purchase price of the equipment in accordance with section 12 of the agreement. When the equipment is no longer needed, it is to be given a value and Alyeska is to receive credit for that amount on its quarterly billing. Although this arrangement has not, to our knowledge, been formalized, there is sufficient written evidence that it was accepted both by Alyeska (in a July 18, 1974 letter) and the Department. For example, in an August 15, 1975 memorandum, the Solicitor's Office stated:

> "The Government holds title to the office equipment referred to in your memorandum. In one case it is purchased directly by your office. In the other, the Government takes title when the equipment is purchased on a cost reimbursable basis by the Technical Support Contractor. The agreement with Alyeska is that it will reimburse Interior for all 'expenses'. It would be proper to figure 'expense' as the difference between the purchase price and its value at the time it is no longer needed for Interior's Alaska Pipeline Office use. The property would at that point either be used elsewhere by Interior, or declared surplus.
>
> "The procedure you suggest is therefore proper - that Alyeska reimburse Interior at the purchase price, and when the equipment is no longer needed, a credit will be given to Alyeska on the quarterly billing for its determined value."

Although this memorandum refers only to "office equipment," other Interior Department memoranda indicate that the agreement was also intended to cover a boat, utilized by the National Marine Fisheries Service. The vessel in fact represents the largest portion of Alyeska's claim, although Alyeska has not, at this time, received credit for any of the property in question.

DISCUSSION

The submission by BLM requests our views as to whether it may reimburse Alyeska for the fair market value of the various items in question (office furniture, equipment, and a boat), based upon estimates provided by Alyeska intended to reflect their value as of December 31, 1978, the date that BLM states that the items became surplus to the Department's requirements for monitoring the pipeline right-of-way. BLM further requests our views as to whether reimbursement for any payment BLM thus makes to Alyeska may be sought from the Interior agency which actually maintains possession of the items, or alternatively, whether reimbursement to Alyeska may be paid from prior year funds of BLM's own "Management of Land and Resources" appropriation. The submission also presents a similar set of questions for reimbursement for other equipment which has since been determined to be in excess of current needs for monitoring the pipeline.

Authority for repayment. On November 16, 1973, Public Law 93-153, was enacted. It contained both the amendments to the Mineral Leasing Act of 1920 (title I) and the Trans-Alaska Pipeline Authorization Act (title II). Id., 87 Stat. 576 (1973). Section 101 amended section 28 of the Mineral Leasing Act of 1920 (codified at 30 U.S.C. § 185) to include, among other language, the following provision:

> "The applicant for a right-of-way or permit shall reimburse the United States for administrative and other costs incurred in processing the application, and the holder of a right-of-way or permit shall reimburse the United States for the cost incurred in monitoring the construction, operation, maintenance, and termination of any pipeline and related facilities on such right-of-way or permit area and shall pay annually in advance the fair market rental value of the right-of-way or permit, as determined by the Secretary or agency head." 30 U.S.C. § 185(1) (1982).

Soon thereafter, the Department of the Interior entered into the right-of-way agreement with Alyeska, section 12 of which--as noted previously--requires the permittees to pay to the United States "such sums as the Secretary shall determine to be required" to reimburse the Department for monitoring the construction, operation, maintenance or termination of the Trans-Alaska pipeline system. Section 12 also provides for a quarterly billing procedure. Alyeska

does not here dispute the basis for the requirement that it reimburse costs to the Department. Its claim concerns only how those costs are to be determined.

The authority created by section 101 of the 1973 amendments to the Mineral Leasing Act of 1920, as quoted earlier, is broadly drawn and appears to have been intended to afford the Secretary wide discretion in determining the type and manner of collections. 1/ Similarly, section 12 of the right-of-way agreement, as well as the Department's implementing regulations, once promulgated, also afford considerable discretion to the Department's authorized officer in setting and adjusting costs to be reimbursed by the applicable permittee. See, e.g., the right-of-way agreement, § 12(C), (F) and (J) (Jan. 23, 1974); 40 Fed. Reg. 17843 (1975) (current version codified at 43 C.F.R Pts. 2802-03 (1984)). The regulations also provide for refunds by the Government if it has received overpayments. Id. at 43 C.F.R. § 2803.1-1(a)(8).

Based upon our examination of the documents accompanying the Department's submission, we are of the view that they simply reflect an understanding between Alyeska and the Department's authorized officer that capital costs of the Department's activities in monitoring the pipeline project should be borne in their entirety by Alyeska, but that, to the extent that applicable equipment retained capital value upon termination of monitoring activities, Alyeska would be considered to have overpaid the Department an amount equivalent to that capital value. In our opinion, it was within the authorized officer's reasonable discretion under the right-of-way agreement to determine that capital costs were attributable to Alyeska, but only for the period in which equipment was used for monitoring the pipeline project. It was similarly reasonable, in light of the uncertainty as to the length of time that applicable equipment would be so utilized, to require Alyeska to pay the entirety of such costs, with the understanding that any amount later determined to constitute an overpayment would be reimbursed by the Department. This understanding appears consistent both with the Department's authority under the authorizing legislation to set reasonable rates for reimbursement of its own costs, and with then-existing and current statutory authority for the Department to reimburse, from applicable

---

1/ The Court of Claims, however, has construed that authority to be limited by the requirement that the Secretary promulgate regulations. Alyeska Pipeline Service Co. v. United States, 624 F.2d 1005, 1013 (Ct. Cl. 1980).

funds, any amount determined to have been overpaid by a permittee. The latter authority, then codified at 43 U.S.C. § 1374 (1970) but since included, as part of the Federal Land Policy and Management Act, at 43 U.S.C. § 1734(c) (1982), states:

> "In any case where it shall appear to the satisfaction of the Secretary that any person has made a payment under any statute relating to the sale, lease, use, or other disposition of public lands which is not required or is in excess of the amount required by applicable law and the regulations issued by the Secretary, the Secretary, upon application or otherwise, may cause a refund to be made from applicable funds."

Consequently, we consider the above-quoted statutory provision as the appropriate authority for any repayment of applicable costs to Alyeska, both with regard to equipment no longer needed for the Department's pipeline monitoring needs as of December 31, 1978, and those no longer needed as of a later date. Determinations as to the amount and source of repayment should also be made in light of this authority.

Amount of repayment. The Department, in its submission, raises two principal questions with regard to determining any amount that it may return to Alyeska: First, whether it is appropriate to rely on Alyeska's submitted estimates (provided to them by independent appraisers) for a boat, office furniture and equipment considered surplus to the Department's pipeline monitoring needs as of December 31, 1978; and second, the manner in which to determine amounts for repayment to Alyeska for equipment that is now--or will become in the future--excess to the Department's needs for monitoring the project.

In both cases presented, it is our view that any reimbursement by the Department should be reasonably calculated to reflect what it considers to be amounts previously paid by Alyeska in excess of what was statutorily required. Thus, if the Department (1) agrees with Alyeska that the itemized equipment for which reimbursement is claimed was in fact removed from pipeline monitoring activities as of December 31, 1978; (2) determines that Alyeska's submitted valuations of those items are reasonable; and (3) finds that the stated fair market values of the equipment in question

are an accurate basis for determining Alyeska's overpayment of costs of pipeline monitoring activities, reimbursement may be made in the amounts requested. Cf. OMB Circular A-110, Attachment N, paragraph (c) (2) (fair market value used as basis for repayment to Government for equipment retained by grantee upon termination of grant). In reviewing these costs, however, the importance of the third factor listed above must be kept in mind. For example, fair market value at the time equipment is removed from monitoring activities may not be an accurate basis for determining the amount of any overpayment of capital costs by Alyeska, if the cost of maintaining the equipment in question was borne by the Department, rather than by Alyeska.2/

A similar method of calculation (i.e. designed to reasonably reflect any overpayment of capital costs by Alyeska) should be used by the Department with regard to equipment not used after 1978 for pipeline monitoring activities. Thus, if the Department determines that the equipment in question is in fact no longer needed for pipeline monitoring activities, it may use any reasonable method to determine fair market value at the time of disuse,3/ and may reimburse Alyeska that amount to the extent that it considers current value to accurately reflect the amount of Alyeska's overpayment.

2/ Alyeska's valuation of the boat, for example, indicates that the high value assigned largely reflects "a recent overhaul." If the cost of that overhaul was borne by the Department, use of fair market value to determine Alyeska's overpayment of capital cost would result in an inflated figure. The same would be true of any other costs relating to the vessel not paid by Alyeska (including upkeep, or transport from place of purchase to Alaska), if those costs have affected determination of current value.

3/ In response to the specific question stated in the submission, we agree that the Department may use the services of an independent appraiser, although in-house estimations may also be available. Since we would consider such estimates to be reasonably related to project monitoring activities, BLM appropriated funds may be used to pay for such services, although subject to reimbursement by Alyeska. We would not consider it legally relevant, as noted in the submission, that GSA property regulations recognize no residual value for non-capitalized equipment.

Source of reimbursement. Finally, the remainder of the Department's questions concern the proper source for financing repayments to Alyeska, and the necessity for making adjustments between the accounts of various Interior agencies. For guidance in this area, we refer the Department to our decision 61 Comp. Gen. 224 (1982), which specifically addressed the question of determining the proper source for payment of refunds to permittees under authority of 43 U.S.C. § 1734(c) (1982). In that case, we stated that funds collected from permittees prior to fiscal year 1978 were deposited into the miscellaneous receipts account in the Treasury, and, to the extent that collections exceeded statutorily-required amounts, refunds under 43 U.S.C. § 1734(c) should be paid from the Treasury's permanent appropriation for "refund of money erroneously received and covered." 61 Comp. Gen. at 226. Funds collected after that time (under authority of the Federal Land Policy and Management Act) should be repaid from the special account in the Treasury in which they were deposited (the revolving fund created in 43 U.S.C. § 1734(b) (1982)).

In the present case we understand the equipment in question to have been purchased prior to enactment of the Federal Land Policy and Management Act, and thus presume that collections from Alyeska were deposited to Miscellaneous Receipts. Based on the guidance provided in 61 Comp. Gen. 224 (1982), any reimbursement to Alyeska should thus be paid from the permanent appropriation for refund of money erroneously received. Under such circumstances, it would not be necessary for the Department to make any intra-agency adjustment of accounts.

for Shelton J. Fowler
Comptroller General
of the United States