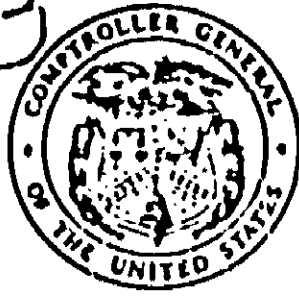


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**DECISION**



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

20534

**FILE:** B-203771

**DATE:** January 13, 1982

**MATTER OF:** Proper act to apply to distribution of  
Bureau of Land Management grazing receipts

**DIGEST:** Because section 701(b) of Federal Land Policy and Management Act of 1976 (FLPMA) provides that in the event of conflict between FLPMA and Acts of August 28, 1937, and May 24, 1939, insofar as they relate to disposition of revenues from lands, latter acts shall prevail, funds currently held in suspense may be distributed to Oregon counties in accordance with formulae set forth in latter acts.

A certifying officer for the Bureau of Land Management, Department of the Interior, has requested a decision on whether funds received by the United States as fees for grazing livestock on public lands under the Act of August 28, 1937, 43 U.S.C. § 1181d, which are currently being held in a suspense account in the U.S. Treasury, may be distributed to the Oregon counties in which these public lands are situated in accordance with the formulae set forth in that Act and the Act of May 24, 1939, 43 U.S.C. § 1181f-1 et seq. The suspense account was created in response to a December 6, 1976, memorandum from the Department of the Interior's Office of the Solicitor to the Bureau of Land Management, advising the Bureau that a conflict existed between sections 401(b)(1) and 701(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701 et seq., and that grazing revenues from the lands in question should not be distributed until this conflict was resolved. Because section 701(b) of the FLPMA explicitly provides that in the event of a conflict between the 1976 FLPMA and the earlier acts, the earlier acts will prevail, we hold that the funds currently being held in suspense may be distributed to the counties in accordance with the formulae set forth in the earlier acts.

Section 401(b)(1) of the FLPMA provides:

"\* \* \*that 50 per centum of all moneys received by the United States as fees for grazing domestic livestock on public lands (other than from ceded Indian lands) under the Taylor Grazing Act (48 Stat. 1269; 43 U.S.C. 315 et seq.) and the Act of August 28, 1937 (50 Stat. 874; 43 U.S.C. 1181d), and on lands in National Forests in the eleven contiguous Western States under the provisions of this section shall be credited to a separate account in the Treasury, one-half of which is authorized to be appropriated and

made available for use in the district, region, or national forest from which such moneys were derived, as the respective Secretary may direct after consultation with district, regional, or national forest user representatives, for the purpose of on-the-ground range rehabilitation, protection, and improvements on such lands, and the remaining one-half shall be used for on-the-ground range rehabilitation, protection, and improvements as the Secretary concerned directs. Any funds so appropriated shall be in addition to any other appropriations made to the respective Secretary for planning and administration of the range betterment program and for other range management.\* \* \*

43 U.S.C. § 1751 (b)(1).

Section 701(b) indicates, however, that:

"(b) Notwithstanding any provision of this Act, in the event of conflict with or inconsistency between this Act and the Acts of August 28, 1937 (50 Stat. 874; 43 U.S.C. 1181a-1181j), and May 24, 1939 (53 Stat. 753), insofar as they relate to management of timber resources, and disposition of revenues from lands and resources, the latter Acts shall prevail." 43 U.S.C. § 1701 note.

The Act of August 28, 1937, referred to in section 701(b), provides at Title I, Section 4, that:

"Sec. 4. The Secretary of the Interior is authorized, in his discretion, to lease for grazing any of said re-vested or reconveyed lands [revested Oregon and California Railroad lands and reconveyed Coos Bay Wagon Road grant lands under the jurisdiction of the Department of the Interior] which may be so used without interfering with the production of timber or other purposes of this Act as stated in section 1: Provided, That all the moneys received on account of grazing leases shall be covered either into the 'Oregon and California land-grant fund' or the 'Coos Bay Wagon Road grant fund' in the Treasury as the location of the leased lands shall determine, and be subject to distribution as other moneys in such funds: \* \* \*" 43 U.S.C. § 1181d.

Title II of the 1937 Act, 43 U.S.C. § 1181f, sets forth the formula for distribution of the moneys deposited in the Oregon and California land-grant fund. Fifty percent of the moneys are to be distributed to the counties in which the revested lands are located, and an additional 25 percent is to be distributed to the counties after any tax indebtedness which accrued prior to March 1, 1938, has been extinguished, and all reimbursable charges against the fund

owing to the general fund of the Treasury have been paid. The remaining 25 percent is to be available for administration of the Act. The Act of May 24, 1939, 43 U.S.C. § 1181f-1, provides for the disposition of funds derived from the Coos Bay Wagon Road grant lands. Not to exceed 75 percent of the receipts deposited in the Coos Bay Wagon Road grant fund in any one year are to be distributed to Coos and Douglas counties. The remaining 25 percent of the receipts are available for administration of the Act of August 28, 1937, insofar as it applies to the Coos Bay Wagon Road grant lands.

It follows that there is a conflict between the FLPMA and the 1937 Act with respect to disposition of grazing revenues generated under the 1937 Act. Therefore, section 701 of the FLPMA dictates that the 1937 Act provisions govern. Although we agree with Interior's Office of the Solicitor that it is unclear why a provision which calls for the crediting of 50 percent of grazing revenues to a new range rehabilitation fund was included in the FLPMA only to be eliminated by a subsequent provision of the Act, section 701 indicates that the Congress intended that the grazing revenues continue to be distributed in accordance with the formulae set forth in the 1937 and 1939 Acts.

We agree with the Bureau of Land Management submission that the legislative history of the FLPMA provides support for the view that in adopting the Act, the Congress did not intend to disturb the distribution formulae set forth in the Acts of August 28, 1937 and May 24, 1939.

Section 401(b)(1) of the FLPMA contains language virtually identical to that set forth in H.R. 13777 (94th Congress). The House report which accompanied that bill explained with respect to the range rehabilitation fund:

"Fifty percent of all grazing fees will be set aside for range improvements to be used together with funds otherwise made available to improve the Federal range. This subsection provides that the funds realized from grazing fees must be used 'on the ground,' i.e., they cannot be used for overhead or other administrative purposes. Administrative needs of the range improvement program will be met out of other authorized appropriations. Half of the amounts available from fees will go back to the district of origin. Allocation of the remaining funds will be determined by the Secretary concerned in a manner to achieve the objectives of range management. Existing statutory provisions for transfer of a portion of the receipts to States and counties and to the Treasury will remain unchanged." H.R. Rept. No. 94-1163, 94th Cong., 2d Sess. 12 (1976). (Emphasis added.)

This paragraph indicates that, at the time at which it established the range rehabilitation fund, the House was aware that a conflicting scheme

for the disposition of Oregon and California revenues was already in effect, and did not intend to disturb that scheme.

Moreover, section 601(b) of H.R. 13777 contained the same language as section 701(b) of FLPMA. With respect to this language, the House report stated:

"In case of conflict or inconsistency between this Act and the Act of August 28, 1937 (O&C Act) as to management of timber resources and distribution of revenues, the latter shall prevail" H.R. Rept. No. 94-1163, supra, at 23.

The manner in which Congress has dealt with grazing revenues after the enactment of FLPMA confirms our interpretation. Although section 401(b)(1) on its face authorizes the appropriation for range rehabilitation purposes of 50 percent of the grazing fees received under various authorities, the Congress has never actually appropriated any revenues collected under the 1937 Act for these purposes. Rather, it has appropriated only the grazing receipts under the Taylor Grazing Act. For example, the act appropriating funds to the Department of the Interior and related agencies for the fiscal year ending September 30, 1978, Pub. L. 95-74, 91 Stat. 285, provided:

"For rehabilitation, protection, and improvement of Federal range lands pursuant to section 401 of the Federal Land Policy and Management Act of 1976 (Public Law 94-579), sums equal to 50 percent of all monies received during the prior fiscal year under sections 3 and 15 of the Taylor Grazing Act (42 U.S.C. 315, et seq.) \* \* \*."

The Department of the Interior appropriation acts for fiscal years 1979 (Pub. L. 95-465, 92 Stat. 1279), 1980 (Pub. L. 96-126, 93 Stat. 954), and 1981 (Pub. L. 96-514, 94 Stat. 295) all contained virtually identical language. Thus, in implementing section 401(b)(1) the Congress has not provided for a distribution of grazing revenues which conflicts with the 1937 Act. In our opinion, by not appropriating the 1937 Act revenues for range improvement under section 401(b)(1) the Congress has indicated that it expects that these funds will continue to be distributed in accordance with the 1937 Act.

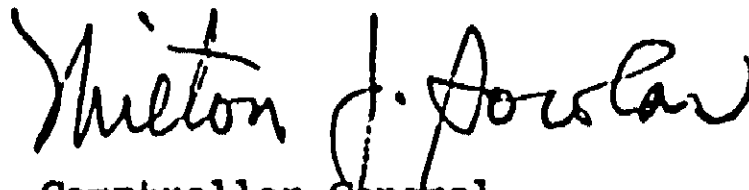
We find additional support for our conclusion that Congress did not intend that 1937 Act revenues be appropriated for range rehabilitation pursuant to section 401 in the appropriation acts for fiscal years 1978 through 1981. Each of the appropriation acts contains the following provision:

"For expenses necessary for management, protection, and development of resources and for construction, operation,

and maintenance of access roads, reforestation, and other improvements on the revested Oregon and California Railroad grant lands, on other Federal lands in the Oregon and California land-grant counties of Oregon, and on adjacent rights-of-way; and acquisition of lands or interests therein including existing connecting roads on or adjacent to such grant lands; an amount equivalent to 25 per centum of the aggregate of all receipts during the current fiscal year from the revested Oregon and California Railroad grant lands, to remain available until expended,\* \* \* Provided further, That the amount appropriated herein is hereby made a reimbursable charge against the Oregon and California land grant fund and shall be reimbursed to the general fund in the Treasury in accordance with the provisions of the second paragraph of subsection (b) of title II of the Act of August 28, 1937 (50 Stat. 876),\* \* \*" Pub. L. 95-74 (FY 1978); Pub. L. 95-465 (FY 1979); Pub. L. 96-126 (FY 1980); Pub. L. 95-514 (FY 1981).

We think that the fact that Congress has appropriated separate funds for the protection and improvement of the Oregon and California Railroad grant lands suggests that it did not intend that these lands participate in the section 401 range rehabilitation program. Also, because in these appropriations the Congress is providing for distribution of 1937 Act revenues in accord with the formula in the 1937 Act, it is clear that it did not expect that these revenues were to be disposed of under section 401.

Since the Congress intended that the formulae for the distribution of grazing revenues not be altered by section 401 of the FLPMA, the funds currently being held in suspense may be distributed to the Oregon counties to which they are due in accordance with the formulae set out in 43 U.S.C. § 1181f and 1181f-1.

for   
Comptroller General  
of the United States