The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Implied Repeal of Date for Forest Service Royalty Payments to States

File: B-236057

Date: May 9, 1990

DIGEST

Section 111(b) of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. § 1721(b), imposes an interest charge on any payment of oil or gas royalties made by the Secretary of the Interior which is "not paid on the [monthly] date required under section 35" of the Mineral Leasing Act (MLA). 30 U.S.C. § 191. We believe this interest charge provision applies only to payments that are subject to the monthly payment date specified in section 35. Oil or gas royalty payments from National Forest acquired lands, which the Forest Service is effectively responsible for disbursing, are required to be distributed annually, in accordance with 16 U.S.C. § 500, and are not subject to the monthly payment requirement of section 35 of the MLA. In our view, nothing in FOGRMA changes this annual distribution date requirement for the Forest Service. Accordingly, these payments are not required to be made monthly as specified in section 35 of the MLA and are not subject to the interest charge provision of section 111(b) of FOGRMA.

DECISION

This decision responds to a June 29, 1989, request from Mr. Darold D. Foxworthy, an authorized certifying officer for the Forest Service, United States Department of Agriculture, pursuant to 31 U.S.C. § 3529. Mr. Foxworthy asks whether oil and gas receipts derived from National Forest acquired lands, which the Forest Service is effectively responsible for disbursing, are subject to the monthly payment requirement of section 35 of the Mineral Leasing Act of 1920 (MLA), 30 U.S.C. § 191, and to the late payment charge imposed by section 111(b) of the Federal Oil and Gas Royalty Management Act of 1982. 30 U.S.C. § 1721(b).

For the reasons set forth below, we have concluded that neither the monthly payment requirement of section 35 of the MLA nor the interest penalty provision of section 111(b) of

FOGRMA applies to oil or gas royalty payments from National Forest acquired lands. In our view, such payments have been, and remain, subject to the annual payment requirement of 16 U.S.C. § 500. Nothing in FOGRMA subjects those payments to the monthly payment deadline of section 35 of the MLA. Section 111(b) of FOGRMA applies only to payments subject to the payment date contained in section 35. Accordingly, payments by the Forest Service on an annual basis, in accordance with 16 U.S.C. § 500, are not subject to the interest charge requirements of section 111(b).

BACKGROUND

Section 111(b) imposes an interest charge on any payment made by the Secretary of the Interior under section 35 of the MLA and on "any other payment made by the Secretary . . . from any oil or gas royalty received by the Secretary which is not paid on the date required under section 35" of the MLA.1/

The MLA, 30 U.S.C. § 181 et seq., provides the Secretary of the Interior with authority to issue mineral leases, including oil and gas leases, on most "public domain" lands.2/ Section 35 of the MLA, 30 U.S.C. § 191, supplies

---

1/ Specifically, section 111(b) provides:

> "Any payment made by the Secretary to a State under section 35 of the Mineral Leasing Lands Act of 1920 (30 U.S.C. § 191) and any other payment made by the Secretary to a State from any oil or gas royalty received by the Secretary which is not paid on the date required under section 35 shall include an interest charge computed at the rate applicable under section 6621 of the Internal Revenue Code of 1954." 30 U.S.C. § 1721(b).

The term "Secretary" is defined in FOGRMA to mean "the Secretary of the Interior or his designee." 30 U.S.C. § 1702(15).

2/ Public domain lands are those which the United States has always owned and which were not acquired from states or private parties. Not all public domain lands are covered under the Mineral Leasing Act. Certain lands, such as national parks and naval petroleum reserves were excluded from MLA coverage. Specific types of public domain lands not leasable under the MLA are leased by the Secretary of the Interior under other statutes. These other authorities

(continued...)

the disbursement formula that governs all revenues generated from Mineral Leasing Act leases.3/ Prior to the enactment of FOGRMA, section 35 required that payments be made on a semiannual basis. Section 104(a) of FOGRMA amended section 35 to require that the states' share of MLA revenues must be paid monthly. Specifically, as amended, section 35 provides that payments to the states under this section must be made:

> ". . . not later than the last business day of the month in which such moneys are warranted by the United States Treasury to the Secretary [of the Interior] as having been received . . . ."

Payments to states of revenues generated from leases on National Forest acquired lands, however, are not paid under section 35 of the Mineral Leasing Act. Acquired lands, i.e., lands that the United States obtained through purchase or transfer from private parties or states, are leased by the Secretary of the Interior, under the authority of the Mineral Leasing Act for Acquired Lands (Acquired Lands Act), 30 U.S.C. §§ 351 et seq. Under this act, mineral revenues derived from leases on acquired lands are paid into the same accounts or funds in the Treasury, and are disbursed in the same manner, as other (i.e. nonmineral) revenues generated from the use of such lands. 30 U.S.C. § 355.

Nonmineral revenues from National Forest acquired lands are disbursed to the states pursuant to 16 U.S.C. § 500, which provides, in relevant part:

> ". . . twenty-five per centum of all moneys received during any fiscal year from each national forest shall be paid, at the end of such year, by the Secretary of the Treasury to the State or territory in which such national forest is situated . . . ." (Emphasis added.)

Therefore, pursuant to the Acquired Lands Act, mineral revenues, including oil or gas royalties, that have been generated from leases on National Forest acquired lands, are deposited by the Mineral Management Service (the collecting

---

2/(...continued)
establish the distribution formula, including the payment date, for revenues generated from leases on these lands.

3/ Section 35 of the Mineral Leasing Act also covers the distribution of revenues generated from leases authorized under the Geothermal Steam Act of 1970, 30 U.S.C. §§ 1001 et seq.

agent for the Department of the Interior) into the National Forest receipt account at the Department of the Treasury. These revenues, along with the nonmineral revenues generated from National Forest acquired lands, are paid by Treasury, on the certification of the Forest Service, to the states at the end of the fiscal year.4/

ANALYSIS

The issue raised by Mr. Foxworthy is whether payments to states from oil and gas royalty receipts derived from National Forest acquired lands under the Acquired Lands Act are subject to the monthly payment and late payment interest requirements of FOGRMA. The Department of the Interior has concluded that they are subject to those requirements of FOGRMA. We disagree.

As noted above, prior to the enactment of FOGRMA, section 35 of the MLA required the Secretary of the Interior (through his designee, the Mineral Management Service (MMS)) to make payments to states on a semiannual basis. By contrast, 16 U.S.C. § 500, applicable to National Forest acquired lands under the Acquired Lands Act, required the Secretary of Agriculture (through his designee, the Forest Service) to make payments to states on an annual basis.

Section 104(a) of FOGRMA amended section 35 of the MLA to require that payments by the Secretary of the Interior be made on a monthly basis.5/ The change in payment schedule effected by section 104(a), by its terms, applies only to disbursements subject to section 35. It does not purport to apply to disbursements made by the Forest Service under the Acquired Lands Act. In our view, section 104(a) did not change the annual disbursement date for moneys derived from National Forest leases under the Acquired Lands Act. Interior does not dispute this point. Rather, Interior relies on section 111(b) of FOGRMA to support its conclusion.

4/ In practice, late each September, based on an estimate of annual receipts, the Forest Service certifies to the Department of the Treasury that 75 percent of the state's share should be paid. The remaining 25 percent (calculated on the actual amount received) is certified for payment in December.

5/ The checks are actually written and disbursed by the Treasury Department, on the certification of the MMS.

Section 111(b) imposes an interest charge for "[a]ny payment made by the Secretary [of the Interior] under section 35 of the Mineral Lands Leasing Act of 1920 . . . and any other payment made by the Secretary . . . which is not paid on the date required under section 35. . . ." (Emphasis added.) Interior contends that the underscored language of section 111(b) "necessarily supersedes" the annual payment schedule under the Acquired Lands Act, set forth in 16 U.S.C. § 500.6/ The Department states:

> "It is the plain intention of FOGRMA § 111(b) to uniformly cover all payments to the states of portions of oil and gas royalty proceeds."

Interior Memorandum at 21.

Section 111(b) deals only with the imposition of interest charges. It does not purport to have anything to do with changing payment dates. That is covered by section 104(a) of FOGRMA which, as discussed above, is applicable to payments under the MLA, not under the Acquired Lands Act. Nonetheless, Interior argues that section 111(b), by imposing an interest charge on "any other payment . . . which is not paid on the date required by section 35," "necessarily supersedes" the annual payment schedule for National Forest acquired lands, established in 16 U.S.C. § 500. (Emphasis added.) For the following reasons we do not agree with Interior's conclusion.

Implied Repeal

First, in our view, Interior's reading of section 111(b) represents an improbable construction of the language of the statute. It imputes to Congress a determination to pursue an unusually circuitous and oblique approach to repealing 16 U.S.C. § 500, while bypassing the more direct and explicit approach that was readily available in the form of section 104(a). At best, it is an argument for implied repeal.

The courts have uniformly stressed that implied repeals are strongly disfavored and that there must be clear and manifest evidence that Congress intended such a result. Pasadas v. National City Bank, 296 U.S.C. 497, 503 (1936).

6/ Department of the Interior Memorandum, dated September 6, 1988, from the Associate Solicitor, Energy and Resources, to the Director of the MMS, "Non-Standard Onshore Mineral Lease Revenue Disbursements, Part II, and Related Mineral Leasing Issues," at 20.

The purpose of this rule, as one commentator has observed, is to give "harmonious effect" to all legislation on a subject where reasonably possible. Sutherland, Statutory Construction, § 23.10.

Further, in the absence of clear and manifest evidence, the only justification for such an interpretation is that the earlier and later statutes are irreconcilable. Morton v. Mancari, 417 U.S. 535, 550 (1974). See also, Sutherland, Statutory Construction, § 23.10. Conversely, if the inconsistency between a later act and an earlier one is not fatal to the operation of either, the two may stand together and no repeal will be effected. Id. at § 23.09.

Here, there plainly is no clear and manifest evidence that Congress intended to repeal the payment schedule established under 16 U.S.C. § 500. Indeed, neither the language of section 111(b) nor, as discussed below, its legislative history shows an inclination on the part of Congress to make any change in that payment schedule. As also discussed below, under a reasonable construction, section 111(b) of FOGRMA and 16 U.S.C. § 500 are by no means irreconcilable. Both can be given "harmonious effect."

Legislative History

Second, in light of the oblique, ambiguous way in which, according to Interior, FOGRMA impliedly repealed the disbursement schedule for National Forest acquired lands, it would be expected that the legislative history would express an intention to do so. But the legislative history provides no support for Interior's view of the effect of FOGRMA. The House Report made it clear that the change in payment schedule applies only to payments under the MLA. The Report stated: "The objective of section [104(a)] is to insure the prompt disbursement . . . of the moneys collected pursuant to the Mineral Leasing Act. . . ." H. Rept. No. 859, supra at 29. There is no suggestion that this change was intended to apply also to payments under the Acquired Lands Act.

The legislative history also makes it clear that the interest charge provision applies only to disbursements made by the Secretary of the Interior under the MLA. The House Report stated:

> "[T]he high penalty required of the United States should be a strong incentive to the [Department of the Interior] to disburse moneys under the mineral leasing laws of 1920 promptly."

H. Rept. No. 859. supra at 36.

Other Statutory Changes to Disbursement Schedules

Third, an examination of other statutory provisions pertaining to payment schedules for monies derived from leases suggests that, when Congress determines to change the disbursement schedule, Congress does so explicitly, not by implication. For example, in 1981, nearly 2 years before FOGRMA was enacted, Congress explicitly amended the Acquired Lands Act to require that revenues from mineral leases on military lands "be disposed of in the same manner as provided under section 35" of the MLA. 30 U.S.C. § 355. Thus, oil and gas royalty payments from military acquired lands must be paid on the date required under section 35 of the MLA and are covered by section 111(b) of FOGRMA.7/

In enacting FOGRMA, Congress took an even more explicit approach in subjecting royalty disbursements to the monthly schedule required by amended section 35. In that statute, Congress not only amended section 35 of the MLA to require monthly payments of oil or gas royalties, but also, through section 104(b) explicitly provided for similar monthly deposits of such royalties from Indian lands. 30 U.S.C. § 1714. Congress also explicitly provided for an interest charge for any late deposits. 30 U.S.C. § 1721(d). These examples suggest that, when Congress determines to amend royalty payment deadlines, Congress does so by explicit legislative language, not by the oblique, at best ambiguous, approach reflected by section 111(b).

Interest Charges Imposed for Timely Payments

Fourth, if section 111(b) is construed to apply at all to National Forest acquired lands, under its express language, an interest charge would be imposed on the Forest Service even though the Service was making payments in a timely manner. As discussed above, the change in payment schedule effected by section 104(a) of FOGRMA--from semiannually to monthly--applies to revenues derived from leases under the

---

7/ Oil and gas royalty payments from military acquired lands, unlike payments from National Forest acquired lands, are made by the Secretary of the Interior. See Interior Memorandum at 52.

MLA, not from leases under the Acquired Lands Act. The annual payment schedule for Acquired Lands Act leases on National Forest Lands, provided under 16 U.S.C. § 500, remains in force. But if the "any other payment" clause of section 111(b) applies to National Forest acquired lands, the Forest Service necessarily would be subject to an interest charge if it failed to make payments on a monthly basis, as required under amended section 35 of the MLA, a provision that otherwise has no application to the National Forest acquired lands.

Thus, section 111(b) would impose interest charges on the Forest Service even though the payments are made in accordance with the payment schedule established pursuant to its governing statute. This is both implausible and at odds with uniform commercial practice. An interest charge presupposes the failure to pay an obligation or debt in a timely manner. If paid on time, the obligation has been fully satisfied and no interest charge is imposed. This is in accord with uniform commercial practice. We know of no statute or other precedent to support the imposition of interest charges when payments are made in accordance with the established payment schedule.

Further, this result, as the legislative history shows, was not intended by Congress. The House Report, in describing the provision concerning "interest charges," stated that these are "interest penalties for late payments . . . when the Secretary [of the Interior] fails to make payment to a State . . . on the date required." H. Rept. No. 859, supra at 36. See also, H. Rept. No. 859, at 25. There is no suggestion that interest charges are to be imposed when, as here, payments are made on the date required. The more reasonable alternative is that section 111(b), like section 104(a), has no application to National Forest acquired lands.

Statutory Definition of "Secretary"

Fifth, the language of section 111(b) suggests that the provision may not apply to National Forest acquired lands. The reason lies in the statutory definition of the term "Secretary."

The term "Secretary" is defined in FOGRMA to mean "the Secretary of the Interior or his designee." 30 U.S.C. § 1702(15). Thus, the reference in section 111(b) to "[a]ny payment made by the Secretary . . . under section 35 of the Mineral Leasing Lands Act of 1920" plainly means the Secretary of the Interior, the official who is effectively responsible for making royalty payments under the MLA.

The statute goes on to refer to "any other payment made by the Secretary . . . from any oil or gas royalty received by the Secretary." Here too, under the statutory definition, the "Secretary" means the Secretary of the Interior. However, under the Acquired Lands Act, it is the Secretary of Agriculture, not the Secretary of the Interior, who is effectively responsible for making royalty payments to the states.

Under the Acquired Lands Act, 30 U.S.C. § 355, monies collected from leases on National Forest acquired lands are deposited by the Mineral Management Service (the Secretary of the Interior's designee) into the National Forest receipt account at the Treasury Department. But it is the Forest Service, the Secretary of Agriculture's designee, not the MMS, which certifies to Treasury how and when such monies are to be paid. Nothing in FOGRMA changed this payment procedure. Thus, since these payments are effectively made by the Secretary of Agriculture, not the Secretary of the Interior, the provision of section 111(b) concerning "any other payment made by the Secretary" does not, by definition, apply to payments of monies derived from leases on National Forest acquired lands.

For the above reasons, we disagree with Interior's assertion that section 111(b) of FOGRMA "necessarily supersedes" the payment schedule provisions set forth in 16 U.S.C. § 500, which are applicable to royalty payments for National Forest acquired lands under the Acquired Lands Act. Moreover, we believe section 111(b) can fairly be read to avoid a conclusion either that it impliedly repealed those payment provisions or that there is an irreconcilable conflict between FOGRMA and 16 U.S.C. § 500.

In accord with Mr. Foxworthy's suggestion, we believe that section 111(b) can and should be read to apply to payments of revenues derived from leases issued under the MLA and to "any other payment made by the Secretary," if such other payment is subject to the payment requirements of section 35. Through such a reading, we avoid the incongruous conclusion that a provision which deals with interest charges for late payments also impliedly repealed a substantive provision establishing payment schedules. We also avoid the implausible conclusion that Congress imposed interest charges when disbursements are made in a timely manner. In addition, through such a reading, we give "harmonious effect" (Sutherland, Statutory Construction, § 23.10) to both section 111(b) and 16 U.S.C. 500.

CONCLUSION

For the reasons explained above, we have concluded that oil or gas royalty payments from National Forest acquired lands must be made annually, in accordance with the requirements of 16 U.S.C. § 500. These payments are not subject to the monthly payment schedule established under section 35 of the MLA, as amended by section 104(a) of FOGRMA. We also have concluded that section 111(b) of FOGRMA, which imposes an interest charge for any payment not made on the date specified in section 35, applies only to payments that are subject to the monthly payment schedule in section 35. Since payments from National Forest acquired lands are not subject to section 35's payment schedule, section 111(b) has no application to them.

Milton J. Socolar

Acting Comptroller General
of the United States