



Decision

Matter of: Office of Navajo and Hopi Indian Relocation—Compliance with the Purpose Statute and the Miscellaneous Receipts Statute

File: B-329446

Date: September 17, 2020

DIGEST

The Office of Navajo and Hopi Indian Relocation (ONHIR) has authority under section 27 of the Navajo-Hopi Settlement Act of 1974, Pub. L. No. 93-531, 88 Stat. 1712 (Dec. 22, 1974) (Settlement Act), to obligate a portion of its lump-sum appropriation on expenditures that assist the Navajo and Hopi tribes in meeting the economic burdens imposed by relocations under the Settlement Act. Therefore, ONHIR appropriations were available for the construction of a travel center as well as for the purchase of cattle and other goods and services to establish a cattle demonstration ranch. By contrast, ONHIR lacks the statutory authority necessary to retain or obligate money from the sale of cattle, and violated the miscellaneous receipts statute, 31 U.S.C. § 3302(b), when it failed to deposit money received from the sale of cattle into the Treasury and instead used that money to offset the ranch's operating costs.

DECISION

This decision addresses the following: (1) whether the Office of Navajo and Hopi Indian Relocation (ONHIR) appropriations were available for it to provide funds to a tribal tourism enterprise for the construction of a travel center; (2) whether ONHIR appropriations were available for the purchase of cattle and other goods and services to establish a cattle ranch; (3) whether ONHIR's retention of the proceeds of cattle sales from the ranch violated the miscellaneous receipts statute, 31 U.S.C. § 3302(b); and (4) whether the Bureau of Indian Affairs (BIA) in the Department of

the Interior (Interior) would be able to continue operating the cattle ranch if ONHIR transfers its functions to BIA.¹

In accordance with our regular practice, we contacted ONHIR and Interior to seek factual information and their legal views on these matters. GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), available at www.gao.gov/products/GAO-06-1064SP; see Letter from Assistant General Counsel for Appropriations Law, GAO, to Attorney, ONHIR (Mar. 15, 2018); letter from Assistant General Counsel for Appropriations Law, GAO, to Principal Deputy Solicitor, Interior (Mar. 15, 2018). In response, ONHIR submitted a letter which contained information and its legal views.² Letter from Executive Director, ONHIR, to Assistant General Counsel, GAO (Apr. 11, 2018) (ONHIR Letter). In addition, the Department of the Interior provided its legal views on whether the Bureau of Indian Affairs would be able to operate and maintain the ranch and retain the proceeds of the cattle sales based on their current statutory authority. Letter from Associate Solicitor, Division of Indian Affairs, to Assistant General Counsel for Appropriations Law, GAO (Nov. 15, 2019) (Interior Letter).

As explained below, we conclude that ONHIR appropriations were available for the provision of amounts to the tribal tourism enterprise for the construction of the travel center as well as for the purchase of cattle and other goods and services to establish the cattle ranch. These obligations were consistent with ONHIR's statutory authority to obligate amounts for "grants, contracts, or expenditures which . . . assist the Navajo Tribe or Hopi Tribe in meeting the burdens" imposed by the Settlement Act. Pub. L. No. 100-666, § 3, amending Pub. L. No. 93-531, § 27(b).

We also conclude that ONHIR violated the miscellaneous receipts statute, 31 U.S.C. § 3302(b), when it failed to deposit money received from the sale of cattle into the Treasury and instead used that money to offset the ranch's operating costs. ONHIR lacked statutory authority to obligate these amounts and instead should have deposited them in the Treasury as miscellaneous receipts. Likewise, Interior has stated that it too lacks the statutory authority to retain or obligate amounts resulting

¹ This decision responds to a request from the late Senator John McCain of Arizona concerning ONHIR and its compliance with certain appropriations laws. Letter from Senator John McCain to Comptroller General (Nov. 13, 2017). We received Senator McCain's request during the course of a congressionally-requested audit of ONHIR's activities. We issued our audit report in April 2018, noting that we would issue a separate legal opinion to address the appropriations law issues raised by certain ONHIR activities on the settlement lands. See GAO, *Office of Navajo and Hopi Indian Relocation: Executive Branch and Legislative Action Needed for Closure and Transfer of Activities*, GAO-18-266 (Washington, D.C.: Apr. 24, 2018), at 9, n. 12.

² ONHIR's letter also incorporated, by reference, its comments on a draft of our April 2018 report. See ONHIR Comments.

from the sale of cattle, and would need additional grants of authority to operate the ranch in its current form. Consequently, we need not address this final question further.³ Interior Letter, at 3–4.

ONHIR should examine its accounts and adjust them as needed to ensure that money received from the sale of cattle is deposited into the Treasury as miscellaneous receipts. If ONHIR lacks sufficient budget authority to cover the adjustment, it should report a violation of the Antideficiency Act as required by 31 U.S.C. § 1351.

BACKGROUND

The Navajo-Hopi Settlement Act of 1974 (Settlement Act) established ONHIR, an independent entity within the executive branch, to carry out the relocation of Navajo and Hopi people living on lands that the act partitioned in order to address a long-standing boundary dispute.⁴ ONHIR administers programs for eligible Navajo and Hopi people incident to their relocation, such as paying for the reasonable costs of replacement housing. Pub. L. No. 93-531 § 15(b). ONHIR also administers the settlement lands—certain lands in Arizona and New Mexico that the Settlement Act made part of the Navajo Reservation, to be taken into trust by the U.S. Government for the benefit of the Navajo Nation. Pub. L. No. 93-531, § 11(h), *added by* Pub. L. No. 96-305, § 4, 94 Stat. 929, 930–932 (July 8, 1980) *amended by* Pub. L. No. 100-666, § 8, 102 Stat. 3929, 3933 (Nov. 16, 1988).

This decision addresses two ONHIR-supported activities: a tourist facility leased and operated by a Navajo enterprise and the Padres Mesa Demonstration Ranch. In fiscal year 1992, ONHIR leased approximately seven acres of Navajo settlement land to a Navajo tourism enterprise for the purpose of operating tourist facilities. ONHIR Letter, Exhibit E, Section 2–3 (ONHIR Lease). When ONHIR negotiated the lease, there were no tourist facilities on the land, as a fire had destroyed them a few

³ In addition to the appropriations issues addressed here, Interior raised several other statutory barriers that could prevent it from successfully taking over the operation and maintenance of the ranch. For instance, Interior states that it lacks the specific statutory authority necessary to buy or sell government property (in this case cattle) in the public marketplace. Interior Letter, at 3. Interior also suggests that the ranch could be considered a government corporation, and therefore, under 31 U.S.C. § 9102, Interior would need specific authority to acquire the ranch. *Id.* at 3–4. We are not addressing these issues in this decision.

⁴ Pub. L. No. 93-531, 88 Stat. 1712 (Dec. 22, 1974). Congress had made multiple amendments to the Settlement Act, including one in 1988 that transferred all powers and duties from a predecessor commission to ONHIR. See Navajo and Hopi Indian Relocation Amendments of 1988, Pub. L. No. 100-666, § 4(a), 102 Stat. 3929, 3929-3930 (Nov. 16, 1988), amending Pub. L. No. 93-531, § 12. For simplicity's sake, this decision refers to ONHIR throughout.

years earlier. ONHIR Letter, at 2–3. Under the terms of the lease, ONHIR agreed to make \$350,000 available for the construction of new tourist facilities, which the Navajo tourism enterprise would then operate. ONHIR Lease, Ex. E, Sec. 7, Sec. 38. ONHIR’s objective was to stimulate the local economy by generating tourist revenue and employment opportunities for Navajos through the operation of the federally funded tourist facilities. ONHIR Letter, at 2–3; ONHIR Lease, at Ex. E, Sec. 5, Sec. 31.

In fiscal year 2009, ONHIR purchased cattle and other goods and services to establish the Padres Mesa Demonstration Ranch on the settlement lands. The purpose of the ranch is to teach Navajo relocatees economically successful and environmentally responsible grazing practices, and ONHIR sells the cattle raised on the ranch. ONHIR Letter, at 5; GAO-18-266, Appendix II, at 28–29 (ONHIR Comments).

ONHIR receives its funding through a single annual appropriation, “Salaries and Expenses,” which enacts amounts for its necessary expenses, as authorized by the Settlement Act, to remain available until expended.⁵ ONHIR offsets its use of appropriated funds for the ranch’s operating costs with money it received from the sale of cattle.⁶ ONHIR Letter, at 7; ONHIR Comments, at 29.

DISCUSSION

We consider two issues here: (1) whether ONHIR’s appropriation was available for the construction of tourist facilities and the operation of a cattle ranch; and (2) whether ONHIR violated the miscellaneous receipts statute when it used amounts received from the sale of cattle for ranch operations instead of depositing those amounts in the Treasury.

Use of ONHIR’s appropriations for tourist facilities and cattle ranch

The purpose statute states that appropriations may be obligated only for the purposes for which Congress appropriated them. 31 U.S.C. § 1301(a). To determine the purposes for which an appropriation is available, we begin by examining the language of the appropriation itself. Here, both presently and during the time in which ONHIR incurred obligations for the travel center and the ranch,

⁵ See, e.g., Consolidated Appropriations Act, 2017, Pub. L. No. 115-31, div. G, title III, 131 Stat. 135, 488–489 (May 5, 2017). A lump-sum appropriation is one that is generally available to cover the necessary expenses of a number of programs, projects, or items. B-327003, Sep. 29, 2015.

⁶ Based upon a review of ONHIR documents in our April 2018 report, we reported that ranch costs had amounted to approximately \$1.8 million between fiscal years 2009 and 2016, comprising a mix of appropriated funds and cattle sales revenue. GAO-18-266, at 9.

ONHIR's appropriation provided amounts "[f]or necessary expenses of [ONHIR] as authorized by Public Law 93-531." See Pub. L. No. 116-94, 133 Stat. 2534, 2736 (Dec. 20, 2019); see *also* Pub. L. No. 111-88, 123 Stat. 2904, 2950 (Oct. 30, 2009) (applicable to the cattle ranch); Pub. L. No. 102-154, 105 Stat. 990, 1028 (Nov. 13, 1991) (applicable to the tourist facilities).

Public Law 93-531 established ONHIR and authorized it to perform various functions. Obligations for the tourist facilities and for the cattle ranch are permissible only if these obligations are reasonably necessary or incident to the proper execution of an authorized agency function and if they bear a logical relationship to the appropriation. See B-330862, Sept. 5, 2019; see *also* B-306748, July 6, 2006. Because the appropriation is available for obligations "as authorized by Public Law 93-531," we must determine whether the obligations bear a logical relationship to the activities that law authorizes.

When it first passed the Settlement Act in 1974, Congress identified a myriad of potential impacts to relocatees and instructed ONHIR to submit a relocation plan that took into account the "adverse social, economic, cultural, and other impacts of relocation on persons involved." S. Rep. No. 93-1177, at 6. By 1980, a lack of support for economic development and for job training had been identified as a substantial deficiency in the 1974 Act. *Relocation of Certain Hopi and Navajo Indians; Hearing before the Senate Select Comm. on Indian Affairs on S.751 and S.1077 Relating to the Relocation of Certain Hopi and Navajo Indians Pursuant to the Act of December 22, 1974*, 96th Cong. 94–95, 121 (1979) (statements of Chester Yellowhair, Chairman of the Navajo-Hopi Land Dispute Committee & Thayer Scudder, Professor of Anthropology, California Institute of Technology).

To address these deficiencies in the 1974 Act, Congress in 1980 amended the Settlement Act and permitted support for economic development and job training. Specifically, section 27 of the Settlement Act, as amended, authorizes obligations "for grants, contracts, or expenditures which assist . . . the Navajo Tribe or Hopi Tribe in meeting the burdens imposed by [relocation]." Pub. L. No. 93-531 § 27, *added by* Pub. L. No. 96-305 § 11, *amended by* Pub. L. No. 100-666 § 3.⁷

ONHIR has stated that the Navajo Nation Hospitality Enterprise operates the travel center, and provides employment opportunities to relocatees and stimulates the local economy. ONHIR Letter, at 3. The Navajo Nation Hospitality Enterprise is a wholly-owned enterprise of the Navajo Nation, established by the Tribal Council "for the purposes of establishing an independent, financially self-sustaining, and successful Navajo business enterprise in the Hospitality field." Navajo Nation Hospitality Enterprise, *About*, <https://www.explorenavajo.com/about.html> (last visited

⁷ Section 27 was initially limited to fund-matching, however, a 1988 amendment removed those restrictions to "allow [ONHIR] to meet the needs of the relocatees in a more direct manner" rather than sharing costs with other entities. S. Rep. No. 100-425 (July 8, 1988).

May 4, 2020). ONHIR has stated that the ranch is designed to encourage and train the relocatees on economically successful grazing practices. *Id.* at 5; GAO-18-266, at 9. Specifically, the ranch is meant to “ease the economic burden of relocation” by ensuring economically successful grazing practices and preserving grazing resources.

ONHIR has a degree of discretion to determine how to carry out its authorized activities. When we review ONHIR’s activities, the question is “whether the expenditure falls within the agency’s legitimate range of discretion, or whether its relationship to an authorized purpose or function is so attenuated as to take it beyond that range.” B-223608, Dec. 19, 1988; *see also* B-329373, July 26, 2018. Neither the obligations for the travel center nor the obligations for the cattle ranch are so attenuated from the authorized purpose of section 27 as to take them outside of the range of reasonable agency discretion. Providing employment opportunities to relocatees, stimulating the local economy in settlement lands, and encouraging and training in economically successful grazing practices are rationally related to reducing the economic burdens imposed by the Settlement Act. ONHIR has, therefore, provided sufficient justification for how both the travel center and the ranch are authorized expenditures under the Settlement Act and do not violate the purpose statute.⁸

Retention and use of money from cattle sales

Under the miscellaneous receipts statute, an official receiving “money for the Government” must deposit the money in the Treasury. 31 U.S.C. § 3302(b). This requirement advances the primary purpose of the statute, which is to ensure that Congress retains control of the public purse, thereby protecting Congress’s constitutional power to appropriate public money. B-327830, Feb. 8, 2017; B-325396, Feb. 23, 2015; B-322531, Mar. 30, 2012.

At issue here is the character of the money that ONHIR received from cattle sales—specifically, whether it constituted “money for the Government.” Here, ONHIR used the proceeds of cattle sales to supplement ONHIR’s appropriation in covering the costs of ranch operations. There is no evidence that ownership of the cattle ever passed to the Navajo relocatees. The payments ONHIR received from the sale of cattle did not represent payments due to the Navajo relocatees, nor did ONHIR treat them as such. Instead, it treated this sales revenue as an additional source of financing for ranch operations. And, because ownership of the cattle remained with

⁸ In its letter to us, ONHIR also argues that its broad authority to administer lands under the Settlement Act, as well as its fiduciary duties to manage the land for the benefit of the relocatees, grant the necessary authority for these expenditures. ONHIR Letter, at 2–4. However, because we conclude that section 27 grants ONHIR sufficient authority for these expenditures, we need not opine on ONHIR’s status as trustee or consider whether ONHIR’s general authority to administer the land would, by itself, provide sufficient justification for these expenditures.

the government, ONHIR received “money for the Government” when it sold the cattle. ONHIR had no authority to retain this money absent an express statutory exemption from the miscellaneous receipts statute. See, e.g., B-302825, Dec. 22, 2004, at 4 (“a generally expressed grant of authority . . . is insufficient to supersede the miscellaneous receipts statute”).

ONHIR argues that because of its position as trustee of the lands, it could retain the sales of the cattle and reinvest the proceeds for the good of the Navajo. In ONHIR’s view, because it operates the Padres Mesa Demonstration Ranch for the benefit of the Navajo relocatees, any money it receives from the sale of cattle is also for their benefit and can be used to fund ranch operations. ONHIR Letter, at 5–7. We disagree. As noted above, the government owned the cattle until the moment they were sold, and therefore when ONHIR received the proceeds of the sale it received money for the government.

ONHIR also argues that it has tacit congressional approval to use appropriated funds and cattle sales revenue for ranch operations. ONHIR Letter, at 2, 4; ONHIR Comments, at 28–29, *reprinted at* GAO-18-266, Appendix II. This argument rests on its inclusion of the Padres Mesa Demonstration Ranch in annual budget requests. According to ONHIR, the Office of Management and Budget’s approval of these budget requests and Congress’s subsequent enactment of its annual lump-sum appropriation provide tacit authority for using appropriated funds and cattle sales revenue to operate the ranch. ONHIR Letter, at 4; ONHIR Comments, at 29.

Contrary to ONHIR’s view, the authorized uses of an appropriation must be anchored in the text of the statute and may not be inferred from its budget justification. See B-195007, July 15, 1980, at 5 (“Generally speaking, budget justifications are no more than an agency’s statement of its anticipated financial needs”). The fact that ONHIR’s budget submissions and certain committee reports acknowledge the operation of the demonstration ranch has no legal significance, because Congress did not give ONHIR statutory authority to retain the proceeds of cattle sales. See B-248284.2, Sept. 1, 1992 (holding that when congressional appropriations committees did not object to an agency’s reprogramming action, such informal congressional approval did not have the force and effect of law); 55 Comp. Gen. 307, 317–19 (1975). Should Congress wish ranch operations to continue in their present form as a federal function—whether under ONHIR or BIA—it would need to enact an exemption from the miscellaneous receipts statute that authorizes the use of cattle sales revenue for ranch operations.

CONCLUSION

Although ONHIR may obligate its lump-sum appropriation for economic development activities that assist ONHIR or the Hopi or Navajo Tribes in meeting the burdens imposed by the Settlement Act, ONHIR violated the miscellaneous receipts statute by failing to deposit money it received from the sale of cattle into the Treasury. ONHIR should examine its accounts and adjust them as needed to ensure that

money received from the sale of cattle is deposited into the Treasury as miscellaneous receipts. If ONHIR lacks sufficient budget authority to cover the adjustment, it should report a violation of the Antideficiency Act as required by 31 U.S.C. § 1351.

A handwritten signature in black ink, appearing to read "Thomas H. Armstrong". The signature is written in a cursive style with a horizontal line above the name.

Thomas H. Armstrong
General Counsel