



Decision

Matter of: U.S. Bureau of Reclamation, Department of the Interior—Amounts Collected From Central Valley Project Water Contractors and the Miscellaneous Receipts Statute

File: B-329575

Date: April 6, 2022

DIGEST

Under the miscellaneous receipts statute, agencies are required to deposit money received for the government into the general fund of the Treasury, unless otherwise authorized by statute. The U.S. Bureau of Reclamation (USBR), Department of the Interior collected amounts from Central Valley Project water contractors but did not deposit them as miscellaneous receipts in the general fund of the Treasury. USBR did not violate the miscellaneous receipts statute because USBR is authorized by law to retain these amounts.

DECISION

This responds to a request for a decision as to whether the U.S. Bureau of Reclamation (USBR), Department of the Interior (DOI), violated the miscellaneous receipts statute, 31 U.S.C. § 3302, when it retained certain amounts collected from Central Valley Project (CVP) water contractors as opposed to depositing amounts into the Treasury.¹ USBR is authorized by law to retain amounts collected from CVP

¹ Letter from Ranking Member, Committee on Natural Resources, House of Representatives, and Ranking Member, Subcommittee on Water, Power, and Oceans, House of Representatives, and four other members, House of Representatives, Oct. 24, 2017. The request referred to a report issued by DOI's Office of Inspector General (DOI OIG) regarding USBR's use of its appropriations for a project called the Bay Delta Conservation Plan project. See DOI OIG, *The Bureau of Reclamation Was Not Transparent in Its Financial Participation in the Bay Delta Conservation Plan*, Report No. 2016-WR-040 (Sept. 2017) (DOI OIG Report). The request asked if USBR's actions were consistent with the miscellaneous receipts statute. We focused our decision on the application of the miscellaneous receipts

water contractors as prepayments for project operation and maintenance costs. As explained below, we conclude that USBR's retention of these amounts did not violate the miscellaneous receipts statute.

Consistent with our practice for legal decisions, we sent a development letter to DOI, requesting factual information as well as DOI's legal views on this matter. Letter from Assistant General Counsel, Appropriations Law, GAO, to Solicitor (Acting), DOI (Dec. 6, 2017) (Development Letter); GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), available at <https://www.gao.gov/products/gao-06-1064sp>. DOI responded in August 2019 and June 2020.²

BACKGROUND

USBR and CVP

USBR's mission is to manage, develop, and protect water and water-related resources.³ USBR constructs dams and canals, among other things, and is the largest wholesaler of water in the United States.⁴ Congress established the Reclamation Fund as a "special fund"⁵ for USBR to construct and maintain irrigation works, among other things. See 43 U.S.C. § 391. USBR also receives

statute to USBR's retention of amounts collected from CVP water contractors to cover project operation and maintenance costs.

² DOI submitted its response to our Development Letter on August 2, 2019. Letter from Associate Solicitor, Division of Water Resources, DOI, to Assistant General Counsel, Appropriations Law, GAO (DOI Response). However, DOI's response did not provide certain factual information or supporting documentation, nor, in a number of instances, DOI's legal views. We sent a second letter to DOI on June 12, 2020. Letter from Assistant General Counsel, Appropriations Law, GAO, to Solicitor, DOI. DOI submitted its response, with supporting documentation, on June 30, 2020. Letter from Associate Solicitor, Division of Water Resources, DOI, to Assistant General Counsel, Appropriations Law, GAO (DOI Second Response). We contacted USBR by email on December 14, 2020, to clarify certain factual matters. In response to our email, on March 3, 2021, we participated in a teleconference with DOI.

³ USBR, *Reclamation/About Us/Mission/Vision*, available at <https://www.usbr.gov/main/about/mission.html> (last visited Apr. 4, 2022).

⁴ *Id.*

⁵ Special Fund is defined as "a [f]ederal fund account for receipts earmarked for specific purposes and the expenditure of these receipts." Office of Management and Budget Circular No. A-11, *Preparation, Submission, and Execution of the Budget*, pt. 1, § 20 (Aug. 2021).

appropriations, such as its appropriation for water and related resources (WRR Appropriation).⁶ The WRR Appropriation is available until expended for activities such as “management, development, and restoration of water and related natural resources and for related activities, including the operation, maintenance, and rehabilitation of reclamation and other facilities, [and] participation in fulfilling related [f]ederal responsibilities.” DOI Response, at 8. The WRR Appropriation states that it shall be derived, to the extent it can be, from the Reclamation Fund.⁷

USBR’s CVP is a network of dams, reservoirs, canals, hydroelectric power plants, and other facilities throughout central California.⁸ The CVP reduces flood risk, supplies water to domestic and industrial users, produces electrical power, and provides water to restore and protect fish and wildlife, among other things.⁹ Under CVP, USBR enters into long-term contracts with users of water such as irrigation districts, and municipal and industrial users, referred to in this decision as water contractors.¹⁰

CVP Operation and Maintenance Costs

CVP’s dams and reservoirs are operated and maintained by USBR. DOI Response, at 4. Water contractors are required by law to pay USBR for operation and maintenance costs¹¹ allocated to them by USBR. 43 U.S.C. § 492. USBR typically pays these costs up front and then bills the water contractors. DOI Second Response, at 7; DOI Response, at 5. The law also permits water contractors to prepay operation and maintenance costs before water delivery. See 43 U.S.C. § 397a. The statute directs that money prepaid to USBR for operation and maintenance is to be deposited into the Reclamation Fund. See *id.* The WRR

⁶ See, e.g., Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, div. D, title II, 128 Stat. 2130, 2309 (Dec. 16, 2014).

⁷ *Id.*; see also DOI, *Natural Resources Revenue Data, Reclamation Fund*, available at <https://revenuedata.doi.gov/how-revenue-works/reclamation/> (last visited Apr. 4, 2022) (amounts in the Reclamation Fund mostly go to three USBR accounts, one of which is the WRR Appropriation).

⁸ USBR, *California-Great Basin, Central Valley Project*, available at <https://www.usbr.gov/mp/cvp/> (last visited Apr. 4, 2022).

⁹ *Id.*

¹⁰ GAO, *Bureau of Reclamation: Availability of Information on Repayment of Water Project Construction Costs Could Be Better Promoted*, GAO-14-764 (Washington, D.C.: Sept. 08, 2014), at 1–2.

¹¹ DOI defines operation and maintenance costs as “all costs that are not identified as a construction cost [which] would generally comprise the administration, management, coordination, and performance of services . . . needed to ensure that [USBR] facilities provide for the delivery of authorized project purposes.” DOI Response, at 4.

Appropriation directs that prepayments under section 397a are to be credited to the WRR account and are available consistent with the purposes of the account. See, e.g., Pub. L. No. 113-235, 128 Stat. at 2309.

From 2009 to 2015, USBR entered into agreements with certain water contractors under which the contractors prepaid operation and maintenance costs for 1-years' worth of water. DOI OIG Report, at 8; DOI Response, at 7; see DOI Second Response, at 7. During this time, USBR used these prepayments to cover operation and maintenance costs. DOI OIG Report, at 8; DOI Second Response, at 7.

DISCUSSION

At issue here is whether USBR had authority to retain prepayments collected from CVP water contractors for project operation and maintenance costs or should have deposited the prepayments in the Treasury as miscellaneous receipts.

Under the miscellaneous receipts statute, "an official or agent of the Government receiving money for the Government from any source shall deposit the money in the Treasury as soon as practicable without deduction for any charge or claim." 31 U.S.C. § 3302(b). The primary purpose of the miscellaneous receipts statute is to ensure that Congress retains control of the public purse thereby protecting Congress's constitutional power to appropriate public money. B-322531, Mar. 30, 2012.

A statute, however, may authorize an agency to retain amounts received from an outside source and direct that such receipts be deposited in an account other than the general fund of the Treasury. B-322531, at 4. Such authority allows the agency to retain the funds without running afoul of the miscellaneous receipts statute. For example, in a prior decision, we found that the Office of Comptroller of the Currency (OCC) was authorized by statute to lease property, collect payments from lessees, and deposit the funds into any regular government depository or any state or national bank. B-324857, Aug. 6, 2015. Since OCC's statutory authority directed that OCC retain and use funds collected through its leases, such amounts were not required to be deposited into the general fund of the Treasury as miscellaneous receipts. *Id.* By contrast, the Office of Navajo and Hopi Indian Relocation (ONHIR) violated the miscellaneous receipts statute when it failed to deposit money received from the sale of cattle into the Treasury because ONHIR lacked statutory authority to retain the funds. B-329446, Sept. 17, 2020.

Here, similar to OCC's authority to retain funds collected from lessees, USBR is authorized to retain prepayments from water contractors as opposed to depositing these amounts in the Treasury as miscellaneous receipts. See 43 U.S.C. § 397a; Pub. L. No. 113-235, 128 Stat. at 2309. We conclude that USBR did not violate the miscellaneous receipts statute when it retained amounts collected from CVP water contractors because USBR has statutory authority to retain these amounts.

CONCLUSION

The miscellaneous receipts statute requires that amounts received for the government be deposited in the Treasury, unless Congress has provided otherwise. 31 U.S.C. § 3302. USBR's retention of operation and maintenance prepayments from CVP water contractors was consistent with the miscellaneous receipts statute because USBR was not required to deposit these amounts into the Treasury under 43 U.S.C. § 397a and the WRR Appropriation.

A handwritten signature in cursive script that reads "Edda Emmanuelli Perez".

Edda Emmanuelli Perez
General Counsel