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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Reclamation Fund and Western Area Power Administration

File: B-303180

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DIGEST

While the relationship between the Bureau of Reclamation (BOR) and the Western Area Power Administration (WAPA) is not a creditor-debtor relationship, WAPA is required to set rates to recover from its power customers amounts appropriated over the years from BOR's Reclamation Fund to finance construction, operation, and maintenance of federal power facilities, and to deposit power revenues into the Reclamation Fund. The statutory power marketing scheme was designed to ensure that power customers reimburse the federal government for the benefit they receive from the federal government. The statutory scheme requires WAPA to enforce reimbursement by WAPA's customers and to repay to the Reclamation Fund the amount it collects.

DECISION

The Department of the Interior (Interior) has requested an advance decision under 31 U.S.C. § 3529 regarding the nature of the relationship between the Reclamation Fund and the Western Area Power Administration (WAPA). The annual appropriation acts for the Department of Energy (Energy) finance WAPA, one of Energy's power marketing administrations (PMA), by providing that most of WAPA's appropriations "shall be derived from the Department of the Interior Reclamation Fund." *See, e.g.,* Energy and Water Development Appropriation Act for Fiscal Year 2004, Pub. L. No. 108-137, 117 Stat. 1827, 1858 (Dec. 1, 2003). Other laws address the reverse flow of money from WAPA to the Reclamation Fund. *See, e.g.,* 43 U.S.C. §§ 392a, 485h(c). In the request, Interior asked us whether the annual appropriation to WAPA is a "a transfer from one appropriation to another" or "a loan from the Reclamation Fund." Letter from Nina Rose Hatfield, Deputy Assistant Secretary for Budget and Finance of the Department of the Interior, to the Comptroller General, May 15, 2004. If a loan, Interior further asked "what recourse is available for Interior to enforce repayment of this liability between Federal agencies" and what is "the authority from which that recourse arises." *Id.*

Interior submitted this request in the context of an ongoing dispute with Energy regarding the appropriate accounting treatment for the appropriation to WAPA from the Reclamation Fund, an account held in the Treasury for the Bureau of Reclamation (BOR), and the amounts that WAPA, by law, must deposit into the Fund. 43 U.S.C. § 392a. Interior and Energy first sought guidance on this issue from the Office of Management and Budget (OMB), which in turn requested guidance from the Federal Accounting Standards Advisory Board (FASAB)¹ and FASAB's Accounting and Auditing Policy Committee (AAPC). Office of Management and Budget, Memorandum from Linda M. Springer, Controller, to the Chief Financial Officers of the Departments of Energy and Interior, *Re: Accounting for Certain "Appropriated Debt" Transactions*, Sept. 15, 2003. While AAPC had this matter under review, Interior requested this decision.

In this decision, we do not address the applicable accounting standards or the pertinent accounting treatment for the transactions at issue. We will defer to FASAB in that regard. In order to inform the discussion among the parties and AAPC and FASAB as they consider the proper accounting treatment for the intragovernmental activities at issue, we explain here the movement of funds between the Reclamation Fund and WAPA and the laws that govern the relationship between BOR and WAPA.

BACKGROUND

WAPA is one of four power marketing administrations in the United States today,² which were established between 1937 and 1977 in order to sell and transmit the power generated at various federal hydroelectric plants. *See* U.S. General Accounting Office, *Power Marketing Administrations: Their Ratesetting Practices Compared With Those of Nonfederal Utilities*, at 6, GAO/AIMD-00-114 (Washington, D.C.: Mar. 30, 2000). The PMAs sell the wholesale power to public customers, such as municipally owned utilities and irrigation districts, which then resell the power to end-use consumers in the retail market. *Id.* The hydroelectric plants, which generate the power, were built as part of large multi-purpose water projects that provide benefits in addition to power generation, such as navigation, flood control, irrigation, water supply, and recreation. *Id.* These projects were constructed, and continue to be owned and operated, by the U.S. Army Corps of Engineers and Interior's BOR. *Id.* Although WAPA sells a small amount of power generated at

¹ GAO, Treasury, and OMB jointly established FASAB in October 1990 as a federal advisory committee to develop accounting standards and principles for federal agencies under 31 U.S.C. § 3511, and to provide guidance to agencies on federal financial reporting requirements.

² The other three PMAs are the Bonneville Power Administration, the Southwestern Power Administration, and the Southeastern Power Administration.

hydroelectric plants of the Army Corps of Engineers, most of its power is BOR-generated. *See* U.S. General Accounting Office, *Power Marketing Administrations: Cost Recovery, Financing, and Comparison to Nonfederal Utilities*, at 21-22, GAO/AIMD-96-145 (Washington, D.C.: Sept. 19, 1996).

The dispute between Interior and Energy arose in the context of the Consolidated Financial Statements of the United States.³ We understand that WAPA, because of its responsibility to credit its power revenues to the Reclamation Fund, records its appropriation from the Reclamation Fund as an “account payable”⁴ in its financial statements. *See* AAPC, Minutes of Jan. 29, 2004, and Minutes of Mar. 10, 2004, available at <http://www.fasab.gov/aapc/meeting.html> (last visited July 14, 2004). BOR, in its financial statements, however, does not record the appropriation from the Reclamation Fund to WAPA as a corresponding “account receivable.”⁵ *Id.* Without an offsetting entry to WAPA’s account payable, Treasury has had difficulty reconciling assets and liabilities in the Consolidated Financial Statements. *Id.*

DISCUSSION

There are four laws that define the relationship between the Reclamation Fund and WAPA: (1) the annual appropriation to WAPA derived from the Reclamation Fund (*see, e.g.*, Pub. L. No. 108-137);⁶ (2) WAPA’s authority to market the power generated

³ The CFO Act of 1990 imposes a duty on Interior and Energy to prepare audited financial statements to “reflect the overall financial position of the offices, bureaus, and activities covered by the statement, including assets and liabilities thereof; and results of operations of those offices, bureaus, and activities.” Pub. L. No. 101-576, Title III, § 303(a)(1), 104 Stat. 2838, 2849-50 (Nov. 15, 1990), *codified as amended at* 31 U.S.C. § 3515. The Government Management Reform Act of 1994 requires the Department of Treasury (Treasury), in coordination with OMB, to prepare a consolidated financial statement of the executive branch of the U.S. government. Pub. L. No. 103-356, Title IV, § 405(c), 108 Stat. 3410, 3416 (Oct. 13, 1994), *codified as amended at* 31 U.S.C. § 331(e)(1).

⁴ The accounting term, “account payable,” reflects an entity’s liability for a good or service that it has received but not yet paid for. *See* U.S. General Accounting Office, *A Glossary of Terms Used in the Federal Budget Process* 8, GAO/AFMD-2.1.1 (Washington, D.C.: Jan. 1993) [hereinafter *Budget Glossary*].

⁵ The accounting term, “account receivable,” reflects an entity’s asset for a good or service that it has delivered but for which it has not yet received payment. *See Budget Glossary* at 9.

⁶ The authorizing legislation for individual Reclamation projects may identify, for purposes of cost recovery, the allocation of that project’s costs to be recovered from
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by BOR projects (42 U.S.C. § 7152); (3) the statutory direction that WAPA credit revenues from the sale of BOR-generated power into the Reclamation Fund (43 U.S.C. § 392a); and (4) WAPA's responsibility to set rates for the sale of power to recover certain costs from customers (43 U.S.C. § 485h(c)).

The operations of most agencies are financed by appropriations from the General Fund of the Treasury. In more limited instances, some agencies have authority to use excise taxes, user fees, or other collections that, by law, are credited to a special deposit account of which the collecting agency has custody. For example, the Census Bureau, an agency of the Department of Commerce, collects fees for providing certain documents and services and is statutorily authorized to deposit revenue from such activities into a special account whose funds the Census Bureau can then use to pay for future activities. *See* 13 U.S.C. § 8. WAPA's operations, however, are financed by appropriations from a special deposit account of another agency in a different department of the federal government.

WAPA's financing arrangement has its origins in the passage more than a century ago of the Reclamation Act of 1902. Pub. L. No. 57-161, 57 Stat. 388 (June 17, 1902), *codified in relevant part at* 43 U.S.C. § 391. With that legislation, Congress created the Reclamation Fund as a "special fund" in the newly established BOR to help finance an expensive enterprise of reclaiming arid lands in the western United States for agricultural and other productive uses that would promote the economic development of the West. *Id.* The 1902 Act authorized the Secretary of the Interior to use the Reclamation Fund to finance the construction, maintenance, and operation of large-scale irrigation projects. *Id.* Until 1914, the Secretary of the Interior used Reclamation Fund money without further authorization or an appropriation from Congress; since 1914, a specific appropriation from the Fund has been required. *See* Pub. L. No. 63-170, § 16, 38 Stat. 686, 690 (Aug. 13, 1914); *Flood-Control Plans and New Projects*. Hearings Before the House Committee on Flood Control, 78th Cong. 627 (Feb. 1 - 23, 1944) (statement by J. Kennard Cheadle, Chief Counsel, Legal Division, Bureau of Reclamation).

In the annual Interior appropriations acts, Congress provided that BOR's appropriations "shall be derived from the reclamation fund," which it defined as "the special fund[] in the Treasury created by the Act of June 17, 1902 (43 U.S.C. 391)." *See, e.g.*, Appropriation Act for the Department of the Interior for Fiscal Year 1978, Pub. L. No. 95-96, Title III, 91 Stat. 797, 801-03 (Aug. 7, 1977). For fiscal year 1978, for example, Congress appropriated money out of the Reclamation Fund for "carrying out the functions of the Bureau of Reclamation as provided in the reclamation laws," including for the "construction and rehabilitation of authorized reclamation projects

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power customers. *See, e.g.*, Fryingpan-Arkansas Project Act of 1962, Pub. L. No. 87-590, 76 Stat. 389 (Aug. 16, 1962).

or parts thereof (including power transmission facilities) and for other related activities, as authorized by law” and for the “operation and maintenance of reclamation projects or parts thereof and other facilities, as authorized by law.” *Id.*

To fund the Reclamation Fund prior to fiscal year 1939, Congress passed numerous laws, some directing that the proceeds of various activities be deposited in the Fund and others authorizing the Treasury to loan money to the Reclamation Fund up to a designated ceiling. *See, e.g.*, 43 U.S.C. §§ 392, 393, 394, 401, 397, 391a. In 1938 and 1939, Congress enacted two provisions that improved the long-term financial viability of the Reclamation Fund: the Hayden-O’Mahoney Amendment to the Appropriation Act for the Department of the Interior for Fiscal Year 1939, *codified at* 43 U.S.C. § 392a, and section 9(c) of the Reclamation Project Act of 1939, *codified at* 43 U.S.C. § 485h(c).

In the Hayden-O’Mahoney Amendment, Congress provided a continuous source of funding for the Reclamation Fund by requiring that any revenue generated by Reclamation Fund-financed projects, including revenue from the sale of power, be deposited into the Reclamation Fund: “All moneys received by the United States in connection with any irrigation projects, including the incidental power features thereof, constructed by the Secretary of the Interior through the Bureau of Reclamation, and financed in whole or in part with moneys heretofore or hereafter appropriated or allocated therefor by the Federal Government, shall be covered into the reclamation fund . . .” 43 U.S.C. § 392a. The Hayden-O’Mahoney Amendment provides further that “after the net revenues *derived from the sale of power* developed in connection with any of said projects shall have *repaid* those construction costs of such project allocated to power to be *repaid by power revenues therefrom* and shall no longer be required to meet the contractual obligations of the United States, then said net revenues derived from the sale of power developed in connection with such project shall, after the close of each fiscal year, be transferred to and covered into the General Treasury as ‘miscellaneous receipts.’” *Id.* (Emphasis added.)

Section 9(c) of the Reclamation Project Act required that rates charged to power customers be set at a level that is high enough to recover the full costs of producing, transmitting, and selling BOR-generated power. 43 U.S.C. § 485h(c). To recover the full costs, the power rates must reflect the annual operation and maintenance costs of power-related activities and the annual amortization of the construction cost of the large-scale irrigation projects allocated to power: “Any sale of electric power or lease of power privileges, made by the Secretary in connection with the operation of any project or division of a project, shall be for such periods, not to exceed forty years and at such rates as in his judgment will produce power revenues at least sufficient to cover an appropriate share of the annual operation and maintenance cost, interest on an appropriate share of the construction investment at not less than 3 per centum per annum, and such other fixed charges as the Secretary deems proper.” *Id.* Through this cost-based rate setting process, Congress arranged for power customers to pay for this publicly provided benefit over time.

For the next four decades, BOR was responsible for both generating power and selling and transmitting this power. Then, in 1977, Congress created the Department of Energy, and assigned to it certain responsibilities and resources from Interior and other entities in the federal government. Department of Energy Organization Act of 1977 (1977 Act), Pub. L. No. 95-91, Title III, 91 Stat. 578 (Aug. 4, 1977), *codified at* 42 U.S.C. § 7152. In the 1977 Act, Congress transferred to Energy the then existing PMAs and “the power marketing functions of the Bureau of Reclamation, including the construction, operation, and maintenance of transmission lines and attendant facilities.” *Id.* at § 7152(a)(1)(D). The 1977 Act also authorized Energy to establish additional PMAs if necessary to perform these power marketing duties. *Id.* at § 7152(a)(3). Pursuant to this authority, Energy established WAPA in December 1977. *See* Western Area Power Administration, *Annual Report Fiscal Year 2002*, at 7, available at <http://www.wapa.gov/media/pdf/annrep02.pdf> (last visited July 19, 2004).

Congress, however, left the Reclamation Fund and the power generating functions of BOR in Interior, and continued to finance the marketing of BOR-generated power from the Reclamation Fund, that is, by appropriation from the Fund to WAPA. In language typical of prior years, WAPA’s fiscal year 2004 appropriation states in relevant part:

For carrying out the functions authorized by title III, section 302(a)(1)(E) of the Act of August 4, 1977 (42 U.S.C. § 7152), and other related activities . . . \$177,950,0000, to remain available until expended, of which \$167,236,000 shall be *derived from the Department of the Interior Reclamation Fund*

See Energy and Water Development Appropriation Act for Fiscal Year 2004, Pub. L. No. 108-137, 117 Stat. 1827, 1858 (Dec. 1, 2003) (emphasis added). This financing method parallels the way Congress financed power marketing of BOR-generated power when that function was housed in Interior prior to the enactment of the Energy Organization Act of 1977.

In addition to retaining the historical practice of financing the power marketing function from the Reclamation Fund, Congress retained, without amendment, the two laws governing revenues from the sale of power, namely the Hayden-O'Mahoney Amendment, 43 U.S.C. § 392a, and section 9(c) of the Reclamation Project Act, 43 U.S.C. § 485h(c). The Hayden-O'Mahoney Amendment requires WAPA, like BOR before, to "cover into the Reclamation Fund" revenues generated by the sale of power. 43 U.S.C. § 392a. Section 9(c) of the Reclamation Project Act requires WAPA, like BOR before, to charge its customers at rates set to recover costs specified in section 9(c) – that is, annual operation and maintenance costs and an amortization of the federal investment in the power facilities constructed to the benefit of the customers. 43 U.S.C. § 485h(c).

Energy set out the process it would use to project costs and establish rates for WAPA in DOE Order No. RA 6120.2. Department of Energy, Order No. RA 6120.2 (Sept. 20, 1979).⁷ Pursuant to this order, WAPA uses financial forecasting techniques to assess whether its current rates are adequate to generate expected revenues at least sufficient to annually recover costs specified in the order, including its annual operation and maintenance costs and the annual amortized amount of the federal investment in the power generation and transmission facilities. *Id.* at ¶¶ 1, 6b, 12. Whenever this annual assessment shows that revenues are not adequate to recover the annual amortization or other costs, then WAPA must suggest a correction plan for the next year that increases rates, decreases costs, changes contracts, or provides “other viable means for meeting cost recovery criteria.” *Id.* at ¶ 10b.

The Secretary of Energy has delegated to WAPA’s Administrator the responsibility to set power rates, and requires that the Federal Energy Regulatory Commission (FERC), an independent agency within Energy, approve WAPA’s rates. 58 Fed. Reg. 59,716, 59,717 (Nov. 10, 1993). Before approving the proposed rates, FERC reviews them to determine “whether the revenue levels generated by the rates are sufficient to recover the costs of producing and transmitting electric energy including the repayment, within the period of cost recovery permitted by law, of the capital investment allocated to power and costs assigned by Acts of Congress to power for repayment.” *Id.* Notably, notwithstanding the fact that the Reclamation Fund is a BOR account, neither BOR nor Interior has a statutory role in setting, reviewing, or approving rates, nor does either have a role in the collection of revenues from WAPA’s customers.

The statutory framework governing WAPA and the Reclamation Fund defines an intragovernmental relationship whereby one federal agency (WAPA) receives funds appropriated from the account of another federal agency (BOR’s Reclamation Fund) and later deposits certain revenues that it collects into that account. This arrangement is certainly not a “loan” between BOR and WAPA as one traditionally views a loan. Congress has not directed BOR to make money temporarily available, nor does BOR make money temporarily available, to WAPA subject to a specified repayment schedule enforceable by BOR. The language of WAPA’s fiscal year 2004 appropriation, Public Law 108-137, and the Hayden-O’Mahoney Amendment, 43 U.S.C. § 392a, speak in terms of appropriations, or fiscal, law – WAPA’s appropriations shall be “derived” from the Reclamation Fund; WAPA’s revenues shall be “covered” into the Reclamation Fund. Moreover, the fact that the Hayden-O’Mahoney Amendment directs that WAPA “cover” its power revenues into the miscellaneous receipts of the Treasury after power revenues have “repaid” the power-related construction costs of a project does not compel a conclusion that

⁷ DOE Order No. RA 6120.2 also provides for the rate-setting process for the other PMAs under other authorities, such as 16 U.S.C. § 825s.

there was a "loan" of funds from the Reclamation Fund to WAPA.⁸ *Compare* Pub. L. No. 108-137, 117 Stat. at 1858 (WAPA's appropriations "shall be derived from the Department of the Interior Reclamation Fund") *with* 16 U.S.C. § 838k(a) (the Bonneville Power Administration "is authorized to issue and sell to the Secretary of the Treasury . . . bonds, notes, and other evidences of indebtedness . . . to assist in financing the construction, acquisition, and replacement of the transmission system").

Nor is this arrangement a "transfer" as that term is commonly used by Congress in the financing of government activities. Congress typically uses the term "transfer" (1) to reflect a movement of funds from one agency to another to reimburse for goods or services received; (2) to permit one appropriation to move funds to another to supplement the receiving appropriation; or (3) to direct a payment from one appropriation to another. The arrangement here most resembles the third usage of the term, but even that usage does not precisely describe the arrangement. Here, Congress appropriates money to WAPA from the Reclamation Fund. The appropriation is at the prerogative of the Congress, not BOR or Interior. BOR moves funds from the Reclamation Fund to WAPA but does so in order to effectuate Congress's appropriation of amounts from the Reclamation Fund to WAPA. WAPA sells power; WAPA sets rates to recover from its customers its annual operation and maintenance costs as well as an amortization of the federal investment in the power facilities that benefit these customers; and WAPA credits revenue it collected to the Reclamation Fund. Neither BOR nor Interior has a role in approving rates to ensure that WAPA recovers specified costs from its customers, nor does either have a role in ensuring that WAPA credits power revenues to the Reclamation Fund.⁹

The statutory scheme here was designed to ensure that power customers reimburse the federal government for the benefit they have received from the federal government. WAPA is the federal agency responsible for enforcing that

⁸ The notion that the private sector use of these or similar terms compels particular actions and accounting treatment is beyond the scope of this decision.

⁹ In the past, we have described the appropriations that fund the federal government's power-related capital investments as "appropriated debt." *See, e.g.,* U.S. General Accounting Office, *Power Marketing Administrations: Cost Recovery, Financing, and Comparison to Nonfederal Utilities*, at 18 n. 5, GAO/AIMD-96-145 (Washington, D.C.: Sept. 19, 1996). Even this term does not precisely describe the financing arrangement. We coined the term in our 1996 report in an effort to quantify the failure of PMAs to timely recover the federal capital investment in power facilities. We pointed out that use of the term was not to suggest that the appropriations for capital investment were to be considered "lending." *Id.*

reimbursement. The Reclamation Fund is the depository for WAPA's collections of the reimbursements.

CONCLUSION

While we find that the relationship between BOR and WAPA is not a creditor-debtor relationship, it is clear that WAPA *is required* to set its rates to recover the federal investment as well as its annual operation and maintenance costs. Certainly, WAPA must track its costs carefully to ensure that it covers into the Reclamation Fund the federal investment and its costs. We defer to FASAB to determine the accounting treatment that should be used. FASAB is the vehicle that GAO, jointly with Treasury and OMB, established to develop accounting standards for federal government entities in furtherance of its duties under 31 U.S.C. § 3511.

/SIGNED/

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