



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

OCT 06 2016



The Honorable Lindsey Manning
Chairman, The Shoshone-Paiute Tribes of the
Duck Valley Indian Reservation
P.O. Box 219
Owyhee, Nevada 89832

Dear Chairman Manning:

I am writing in response to your inquiry to Larry Roberts, Principal Deputy Assistant Secretary – Indian Affairs, concerning the investment revenue issue related the Duck Valley Reservation Water Rights Settlement (Settlement) and the related appropriated monies (Fund). Specifically, you have requested that any revenue generated by the investment of the Fund prior to January 25, 2016, be paid to the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation (Tribes). For the reasons discussed below, this is to inform you that the Department of the Interior (Department) lacks the legal authority to comply with your request. Moreover, the Department has a legal obligation to remit any amounts generated by any investment of the Fund prior to January 25, 2016, to the general fund of the Treasury and has therefore, acted accordingly.

As you are aware, under the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation Water Rights Settlement Act, P.L. 111-11, § 10807 (2009) (the Act), the Settlement became effective on January 25, 2016, upon the publication in the Federal Register of the Secretary of the Interior's (Secretary) findings related to the implementation of the Act and underlying Settlement. 81 Fed. Reg. 4063 (January 25, 2016). In addition to approving and ratifying the Settlement, the Act provided for the creation of two funds, the development fund and the maintenance fund, and authorized appropriation of monies to be deposited into the respective funds. The Fund consists of \$45,000,000 in development funds and \$15,000,000 in maintenance funds. The Fund was appropriated over a 5 year period beginning in fiscal year 2010 and ending in fiscal year 2014.

Neither the Act nor the Settlement provides authority for the Fund to be invested or to earn interest prior to the effective date of the Settlement, January 25, 2016. Notably, upon publication of the Secretary's findings, the Act directs the Secretary to "manage the funds, including by investing amounts from the Funds in accordance with [25 U.S.C § 161 and 25 U.S.C. § 162a]." Pub. L. 111-11 § 10807(e) (2009). Congress's specific directive to the Secretary to invest appropriated amounts post-effective date undercuts any argument that Congress – without specifically authorizing investment – intended the Fund earn interest pre-effective date. This notwithstanding, the Fund was inadvertently invested and earned interest for a period of time prior to January 25, 2016.

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Council, Dennis, Peck P,
Jeanne / e-file: Investment Funds Decision
DATE 10/13/16
SENDER MG

While it is true that following the effective date, the Act requires the Fund to be managed as a trust fund and that will bear interest in accordance with 25 U.S.C. § 161a, the Fund, prior to the effective date of January 25, 2016, did not constitute a trust fund. Rather, money held in the Fund prior to the effective date remained the property of the United States set aside for the as-of-then unconsummated Settlement. Therefore, since there is no explicit language in the Act or the Settlement identifying interest as a source of the Fund nor directing the payment of interest from the Fund pre-effective date, it is the Department's position that it lacks the authority to expend any interest generated by the investment of the Fund prior to January 25, 2016. In conclusion, any interest the Fund generated pre-effective date may not be used in connection with the implementation of the Act and underlying Settlement. Accordingly, the interest generated by investment of the Fund prior to January 25, 2016, has been remitted to the general fund of the Treasury in accordance with 31 U.S.C. § 3302(b).

Sincerely,

A handwritten signature in black ink, appearing to read "Alletta Belin". The signature is fluid and cursive, with the first name "Alletta" and last name "Belin" clearly distinguishable.

Alletta Belin
Senior Counselor to the Deputy Secretary