



United States Department of the Interior

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Ladies and Gentlemen:

On August 23, 2018, representatives from the Department of the Interior (Department) met with Garfield and Mesa County Commissioners. During the discussion, representatives from both Garfield and Mesa Counties (Counties) requested the Department to confirm that:

1. If the Federal Mineral Lease District awards grant funds to Garfield or Mesa County, the funds will not impact subsequent Payments in Lieu of Taxes (PILT) payments otherwise due to the county.
2. If the Federal Mineral Lease District pays the county under a contract authorized by C.R.S. § 30 C.R.S. 30-20-1305.5, the payments will not impact subsequent PILT payments otherwise due to the county.¹

For the reasons discussed in this memorandum, the Department confirms it will not offset PILT payments to the Counties if the Garfield or Mesa Federal Mineral Leasing Districts (FMLD) fund their respective counties through grants or contracts.

I. Background

Section 3404 of the National Defense Authorization Act for Fiscal Year 1998² directed the Secretary of Energy to transfer to the Secretary of the Interior administrative jurisdiction over public domain lands within Oil Shale Reserves Numbered 1 and 3 in western Colorado, and the Bureau of Land Management (BLM) to manage the transferred lands. The act directed the Secretary of the Interior to lease the transferred lands for the purpose of exploration for, and development and production of petroleum (other than in the form of oil shale) in accordance with

¹ The Counties have confirmed orally and in writing that they do not consider the conclusions in this memorandum as constituting legal advice from the Department to the Counties, but rather as factual assurance that the federal government will not seek or apply a PILT offset against the Counties if its respective Federal Mineral Leasing District (FMLD) grant to or contract with the Counties for such funds.

² Pub. L. No. 105-85, 111 Stat. 1629, 2059, codified as amended at 10 U.S.C. § 7439 (2012). Throughout this memorandum § 3404 will be referred to as the “1997 Transfer Act” or simply as “the act.”

the Mineral Leasing Act (MLA).³ The act also required that all receipts from leases of the transferred lands be deposited into a Treasury account until the Secretaries of the Interior and Energy certified to Congress that the sum of the moneys in the account was equal to certain environmental cleanup costs for the lands and certain infrastructure costs incurred when the lands were under Department of Energy jurisdiction.⁴

On August 7, 2008, the Secretaries of the Interior and Energy certified to Congress that the account contained sufficient funds to satisfy the statutory requirements, the account had grown to approximately \$113,680,626. By that time, the BLM had expended approximately \$24,019,400 to pay for the costs of environmental cleanup. In addition, Congress allocated approximately \$39,435,387 of the balance to reimburse the United States for infrastructure costs incurred when the lands were under DOE jurisdiction.⁵ In 2009, Congress permanently rescinded \$12,995,720 of the unobligated balances in the account.⁶ Accordingly, the account, as of December 2017, contained a balance of approximately \$37,230,119. Earlier this year, the Department distributed \$18,242,758 to the State of Colorado in accordance with the MLA.⁷ The State of Colorado then distributed those funds to the Garfield and Mesa County Federal Mineral Leasing Districts (FMLD) and Rio Blanco and Moffat Counties as follows:

County or FMLD	Percent of fund given⁸	Paid in March 2018	Will be paid in fiscal year 2018 (due to sequestration)	TOTAL
Garfield FMLD	40%	\$6,815,494.48	\$481,608.82	\$7,297,103.30
Rio Blanco	40%	\$6,815,494.48	\$481,608.82	\$7,297,103.30
Mesa FMLD	10%	\$1,703,873.62	\$120,402.20	\$1,824,275.83
Moffat	10%	\$1,703,873.62	\$120,402.20	\$1,824,275.83

³ Codified at 30 U.S.C. §§ 181 *et seq.*

⁴ 10 U.S.C. § 7439(f)(2).

⁵ Thus the total amount necessary to satisfy the statutory requirements was approximately \$63,454,787.

⁶ Division E, title I of the Omnibus Appropriations Act, 2009, Pub. L. No. Law 111-8, 123 Stat. 524, 703.

⁷ Under the MLA, the United States normally shares royalties from federal mineral leases with the state in which the leases are located. See 30 U. S.C. § 191. And under the MLA, the Office of Natural Resources Revenue disbursed the balance in the Treasury account as follows: to the State of Colorado, \$18,242,758; to the Reclamation Fund, \$14,892,048; and to the General Fund, \$4,095,313.

⁸ Colorado HB 18-1249 determines county percentage. Specifically, Colorado HB 18-1249 directs payments from the Anvil Points federal mineral lease distribution to FMLD — if they exist — or directly to the county if an FMLD does not exist.

II. Discussion

PILT payments are federal payments made to local governments that help offset losses in property taxes due to non-taxable federal lands.⁹ The Department calculates PILT payments using a complex formula; several factors—including payments in prior years from other specified federal land payment programs—affect the calculation of a payment to a given county.

Prior federal payments that count against future PILT payments are listed in 31 USC § 6903(a)(1). The 1997 Transfer Act is not included in this list; however the act directed the Department to disburse the funds in accordance with the MLA—which is listed in 31 USC § 6903(a)(1).¹⁰ The Department therefore, would generally consider payments under the 1997 Transfer Act as payments under the MLA for purposes of offsetting future PILT payments to the Counties.¹¹

However, in 2011, the State of Colorado enacted the Federal Mineral Lease District Act to authorize the creation of federal mineral lease districts as independent public bodies.¹² An FMLD is an “independent public body politic and corporate” and “is not an agency or county or state government and is not subject to the administrative direction by any department, commission, board, or agency of a county or state.”¹³ Both Garfield and Mesa Counties created such districts in 2012 and 2011, respectively.

III. Conclusion

Because FMLDs are, by statute, independent from the county and have the discretion to exercise the powers granted by Colorado’s Federal Mineral Lease District Act, the Department does not consider the MLA payments made to the FMLDs as payments made to the Counties. The Department would therefore not deduct payments to an FMLD from future PILT payments to the Counties. As a result, the Department believes that any funds the Counties receive from the Garfield or Mesa FMLD —through grants or contracts—would not subject the Counties to future PILT offsets.¹⁴ Accordingly, the Department confirms that:

1. If the Federal Mineral Lease District awards grant funds to Garfield or Mesa County, the funds will not impact subsequent PILT payments otherwise due to the county.

⁹ 31 U.S.C. §§6901-6907.

¹⁰ The MLA (30 U.S.C. §191), requires the United States to share royalties from federal mineral leases equally with the state in which the leases are located.

¹¹ An argument could also be made that because the 1997 Transfer Act is not listed under 31 USC § 6903(a)(1), and the payment to Colorado was made through the provisions in the act, the funds would not count against future PILT payments.

¹² See Colo. Rev. Stat. §30-20-1301, *et seq.*

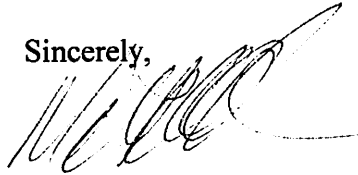
¹³ C.R.S. §30-20-1305.5 (1).

¹⁴ The Federal Mineral Lease District Act authorizes FMLDs to “enter into grant or loan agreements” and to “enter into contracts and agreements including those described in section 29-1-201.” C.R.S. §30-21-1305.5(2)(e) & C.R.S. §30-21-1305.5(2)(b). Section 29-1-201 delivers the Colorado Legislator’s support and encouragement that local governments “make the most efficient and effective use of their powers and responsibilities by cooperating and contracting with other governments . . .” which would include counties and FMLDs.

2. If the Federal Mineral Lease District pays the county under a contract authorized by C.R.S. § 30 C.R.S. 30-20-1305.5, the payments will not impact subsequent PILT payments otherwise due to the county.

If you have questions regarding this correspondence, please contact Carrie Wallace, Attorney Advisor at (303) 445-0638.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. McKeown', with a long horizontal flourish extending to the right.

Matthew McKeown
Rocky Mountain Regional Solicitor