

S. Rentschler
GGM



DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

9036

FILE: B-192853

DATE: February 2, 1979

MATTER OF: Kittitas Reclamation District - [Claim for Costs
of Engineering Studies]

DIGEST: Bureau of Reclamation, United States Department of Agriculture (Bureau), has no authority to pay claim of Kittitas Reclamation District (KRD) for costs incurred in retaining private engineering firm to perform Studies concerning a proposed pumping plan to obtain water from the Yakima Federal Reclamation Project. Under applicable Reclamation Law the Bureau may undertake such projects only where the irrigation district enters into repayment contract with the Bureau. It may not make a grant of such money. Further, in contracting for these Studies, KRD was acting on its own behalf and not as the Bureau's agent.

AGC00076

ID

DLG
DD 8/8

This is in response to a request by an authorized certifying officer of the Bureau of Reclamation, United States Department of Agriculture (Bureau), for an advance decision regarding payment of a claim submitted by the Kittitas Reclamation District (KRD), Yakima Project, Washington. KRD has submitted a voucher in the amount of \$41,173.11, the total cost of engineering Studies and related administrative expenses (Studies) for which it contracted with an engineering firm during March-May, 1977.

KRD contends that it incurred these expenses as a result of the Bureau's forecast that the 1977 irrigation season would be characterized by drought conditions. KRD claims that it is entitled to reimbursement for the Studies because the Studies "were done at the request of the Bureau"; because KRD "acted as agent for the Bureau"; and because the Bureau promised reimbursement. The facts leading up to KRD's request for payment are somewhat complex. The Bureau administers the Yakima Federal Reclamation Project which has supervision over the entire Yakima River water supply. This water supply includes both natural riverflow and stored water in six reservoirs.

~~003414~~

dec

In early 1977, the Bureau predicted that the total water supply available in 1977 for the Roza and Kittitas Divisions of the Yakima Project would be the "lowest on record." The Bureau encouraged these Divisions to conserve and supplement their existing water supplies.

KRD, apparently as a result of the Bureau's predictions, retained a private engineering firm to devise a pumping plan to extract and divert storage water from Lake Cle Elum to farmers in KRD. On March 18, 1977, the Board of Directors of KRD passed a resolution requesting emergency funds from the Bureau in the order that KRD could finance its new pumping plan. The Bureau suggested and KRD agreed, subject to approval of its electors, to enter into an interest free repayment contract with the United States, and to include the cost of the Studies as part of the repayment contract. No contract was actually executed at that time, however. Shortly thereafter, the Bureau decided that a similar pumping project on a somewhat larger scale which would provide for the Roza Irrigation District as well as KRD would be advisable. The Bureau felt that it could begin plans for construction since KRD had indicated its willingness to enter into a repayment contract. It planned to allocate the final cost of Project construction on the basis of 47% payable by KRD and 53% payable by the Roza Irrigation District. The Bureau contracted with an outside contractor for construction of the Project. The Project became known as the Cle Elum Pumping Project (Project).

Just two weeks after the Bureau decided to proceed with the Project, KRD twice wrote to the Bureau restating its willingness to enter into a repayment contract with the Bureau in which KRD would agree to obligate itself for 47% of the cost of construction in return for an equal percentage of the waters to be pumped from the Project. KRD requested that it be given "equitable" repayment terms that would reflect the "actual repayment capabilities" of the economically depressed KRD.

In May, 1977, the Bureau revised its estimate of the total water supply available. The revised estimate predicted that the supply would be 385% more than the original estimate. The Bureau's original estimate had failed to account for return flows and therefore had resulted in a miscalculation.

KRD, by resolution, withdrew its support of the Project on May 25, 1977. This withdrawal was based on the fact that farmers in KRD had geared their planting schedules and made other adjustments to the low water supply originally forecast by the Bureau. Upon learning of the revised estimate, KRD felt that it could not use the extra water to be supplied by the Project and that it would not be cost-effective for it to pay the costs of the Project when it could not use the increased waters to be supplied thereby. KRD stated that its withdrawal was conditioned on its being reimbursed for expenses relating to the Project. In August, KRD stated that it would neither participate in the Project nor pay any costs associated with the Project. The Project was completed in July, 1977. However, water was never pumped from the Project since its waters were never needed.

The Bureau had no authority to advance monies to KRD under the applicable Reclamation Laws, Act of June 17, 1902, 32 Stat. 388, and all laws amending and supplementing it, unless KRD entered into a repayment contract with the United States, acting through the Bureau. The Bureau would then have had the authority to lend the money to KRD, without interest, and KRD would have been required to repay the money over an agreed-upon term of years. In the instant situation, if KRD had entered into a repayment contract, it could have received advances under either the Emergency Fund, Act of June 26, 1948, 62 Stat. 1052, 43 U.S.C. §§ 502, 503 (1976) (Emergency Fund), or under the so-called Emergency Act of 1976-1977, Pub. L. 95-18, April 7, 1977, 91 Stat. 36, as amended by Pub. L. 95-107, August 17, 1977, 91 Stat. 870 (1977) (Emergency Act), 43 U.S.C. 502 note.

Thus, under applicable Reclamation Law, the Bureau had authority to build the Project at the request of the irrigation districts, provided the districts agreed to repay the costs. The Bureau has no authority to make grants, or otherwise pay, for these costs in the absence of an agreement from the district to repay them.

Since KRD withdrew from the Project and stated that it would pay none of the cost associated with the Project, it cannot receive reimbursement for the Studies under the Reclamation Laws.

The next issue for discussion is whether the Bureau's responses to requests by KRD for reimbursement for the Studies in any way obligated the Bureau to reimburse KRD for those expenses. KRD suggests that it commissioned the Studies as agent for the Bureau.

From an examination of the record, we believe that KRD incurred the engineering Studies expenses that are the subject matter of its claim, on its own behalf and not while acting as an "agent" of the Bureau or while carrying out any "request" by the Bureau.

B-192853

An agency relationship exists "only if there has been a manifestation by the principal to the agent that the agent may act on his account and consent by the agent to so act." Restatement (Second) of Agency § 15 (1957). While the Bureau, as noted above, encouraged KRD and the Roza Irrigation District to "conserve and supplement" existing water supplies, the Bureau did not request that KRD engage the private engineering firm on the Bureau's behalf. KRD, on its own, contracted with the engineering firm as a defensive measure against the impending drought. In fact, reclamation projects in general are undertaken on behalf of the irrigation districts and their constituents and there is no basis to find that KRD acted as an agent for the Bureau.

Further, as stated earlier, the Bureau suggested, and KRD agreed to include the cost of the Studies as part of the repayment contract. This was not a promise by the Bureau to pay for the Studies without reimbursement but an agreement by the Bureau to lend money to KRD. KRD would then be required to repay the loan over an agreed upon period of time. As noted, this agreement was never consummated.

Accordingly, KRD's request for payment in the amount \$41,173.11 is denied.


Deputy Comptroller General
of the United States