



## Decision

**Matter of:** Denali Commission—Amounts Available for Bulk Fuel Storage Tanks

**File:** B-323365

**Date:** August 6, 2014

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### DIGEST

The Denali Commission (Denali) receives an annual lump-sum appropriation to be used for expenses to carry out its energy-related mission. Denali also receives statutorily directed annual transfers from the Oil Spill Liability Trust Fund (OSLTF) to repair and replace bulk fuel storage tanks, as well as grants from the Rural Utility Service (RUS) to acquire, construct, upgrade, and otherwise improve energy generation, transmission and distribution facilities. The statutorily directed transfers from the OSLTF and grants from the RUS supplement Denali's annual lump-sum appropriation. Where an appropriation is available for a particular purpose and additional amounts are statutorily transferred from other accounts to assist in carrying out that same purpose, the additional amounts are treated as supplementing the agency's appropriation absent language to the contrary.

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### DECISION

The Inspector General (IG) for Denali requested a decision on the appropriate source of funds for costs related to bulk fuel tanks. In addition to its lump sum fiscal year appropriations, Denali receives transfers from the OSLTF for the "repair and replacement of bulk fuel tanks" and grants from the RUS to "extend, upgrade, and otherwise improve energy generation, transmission, or distribution facilities." Specifically, the IG asked whether the OSLTF and RUS funds supplement Denali's lump-sum appropriation.<sup>1</sup> Letter from Inspector General, Denali, to Managing Associate General Counsel, GAO, Mar. 28, 2012 (Request Letter). As explained below, the statutorily directed transfers from the OSLTF and grants received from the RUS are meant to supplement Denali's annual lump-sum appropriation.

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<sup>1</sup> The Denali Inspector General position is currently vacant. The Federal Co-Chair, however, indicated that Denali remains interested in obtaining a decision on this question.

The IG also asked whether Denali may use its OSLTF transfers not only for the repair and replacement of bulk fuel tanks but also to undertake activities associated with broader environmental goals supported by the OSLTF generally. We conclude that Denali's OSLTF amounts are not available for purposes beyond the statutorily authorized repair and replacement of bulk fuel tanks.

Our practice when issuing decisions and opinions is to obtain the views of the relevant agencies in order to develop a factual record and to establish the agencies' legal positions on the request's subject matter. GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), available at [www.gao.gov/products/GAO-06-1064SP](http://www.gao.gov/products/GAO-06-1064SP). The record in this case consists of the IG's request letter and Denali's response to our development letter requesting additional information. Request Letter; Letter from Federal Co-Chair, Denali, to Senior Staff Attorney, GAO, May 14, 2012 (Response Letter). Denali also provided additional e-mail responses to several follow-up questions submitted by GAO. E-mail from Chief Financial Officer, Denali, to Senior Staff Attorney, GAO, Aug. 17, 2012; Email from Federal Co-Chair, Denali, to Senior Staff Attorney, GAO, July 26, 2012.

## BACKGROUND

The Denali Commission Act of 1998 established Denali as a federal agency that, among other things, promotes "rural development, [and] provide[s] power generation and transmission facilities . . . to rural Alaskan communities." Pub. L. No. 105-277, div. C, title III, §§ 301–309, 112 Stat. 2681, 2681-637 through 2681-641 (Oct. 21, 1998). As part of its energy program, Denali "focuses on bulk fuel facilities and rural power system upgrades/ power generation . . . across rural Alaska." *Denali Commission Fiscal Year 2014 Draft Work Plan*, 79 Fed. Reg. 33735, 33736 (June 12, 2014). The IG explains that bulk fuel tanks are used to store community supplies of fuel. Request Letter, at 2.

Denali receives a lump-sum appropriation to be used for the "expenses of the Denali Commission including the purchase, construction, and acquisition of plant and capital equipment as necessary." *E.g.*, Consolidated Appropriations Act, 2014, Pub. L. No. 113-76, div. D, title IV, 128 Stat. 5, 181 (Jan. 17, 2014); Request Letter, at 2. Denali also receives annual statutorily directed transfers from the OSLTF to "repair or replace bulk fuel storage tanks in Alaska which are not in compliance with federal law."<sup>2</sup> Pub. L. No. 105-277, § 329. Further, Denali receives funds in the

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<sup>2</sup> The OSLTF was established by statute in 1990 as a repository of petroleum industry taxes and amounts from other oil pollution liability and compensation funds. Oil Pollution Act of 1990, Pub. L. No. 101-380, title IX, § 9001(a), 104 Stat. 484, 573 (Aug. 18, 1990). In addition to funding oil spill and pollution response activities,

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form of statutorily authorized grants from the RUS. The RUS authority directs that it may “make grants and loans to the Denali Commission . . . to acquire, construct, extend, upgrade, and otherwise improve energy generation, transmission, or distribution facilities serving [qualifying communities].” 7 U.S.C. § 918a(a)(2). The IG reports that Denali’s lump-sum, OSLTF, and RUS funds have been used to finance bulk fuel storage upgrade projects in years prior to 2012. Response Letter, at 2.

The IG also reports that Denali proposes to expand its use of OSLTF transfers beyond “the construction of community bulk fuel storage tanks” to encompass broader environmental and energy conservation-related activities. Response Letter, at 1. Such proposed activities may include the construction of fixed fuel barge mooring and landing sites, improved building weatherization and development of alternative energy systems, among other projects. *Id.*, at 1–2.

## DISCUSSION

At issue here is (1) whether Denali may properly charge its lump-sum appropriation, its OSLTF transfers, and its RUS grants for expenses related to bulk fuel storage tanks, and (2) whether Denali may use its OSLTF transfers to undertake activities associated with broader environmental goals.

To determine the purpose of an appropriation, the starting point is the language of the statute. B-318831, Apr. 28, 2010; B-303845, Jan. 3, 2006. Denali’s annual appropriation provides for the “expenses of the Denali Commission including the purchase, construction, and acquisition of plant and capital equipment as necessary.” *E.g.*, Pub. L. No. 113-76, 128 Stat. at 181. This annual appropriation is available for all the expenses of Denali. In light of Denali’s energy-related mission as authorized in the Denali Commission Act, Denali’s lump-sum appropriation is available for grants for bulk fuel storage tanks, including the repair and replacement of bulk fuel storage tanks.

In addition to its annual lump-sum appropriation, Denali receives an annual statutorily directed transfer from the OSLTF. Section 329(b) of OSLTF’s statute with respect to Denali provides:

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OSLTF amounts are directed to various other agencies and programs for purposes related to achieving the environmental goal of oil pollution prevention. 26 U.S.C. § 9509(c)(1)(D). The amounts received by Denali are derived from the interest earned on the invested balance transferred to OSLTF from the Trans-Alaska Pipeline Liability Fund. 43 U.S.C. § 1653 note.

“(b) Use of Interest Only.—The interest produced from the investment of the Trans-Alaska Pipeline Liability Fund balance . . . deposited into the [OSLTF] . . . *after June 16, 1998 shall be transferred annually* by the National Pollution Funds Center to the Denali Commission for a program . . . *to repair or replace bulk fuel storage tanks in Alaska which are not in compliance with federal law.*”

Pub. L. No. 105-277, § 329 (emphasis added). OSLTF amounts are specifically available to “repair or replace” bulk fuel storage tanks. *Id.* Because the OSLTF transfer language with respect to purpose is more specific than Denali’s lump-sum appropriation, the IG asks whether the OSLTF transfers represent the maximum amount Denali may obligate for storage tank repair and replacement or whether the transfer amounts supplement Denali’s lump-sum appropriation for the purpose of bulk fuel tank repair and replacement.

Generally, if an agency receives an appropriation for a specific purpose, the agency should use that appropriation to the exclusion of a more general appropriation that may be broad enough to cover the same purpose. B-289209, May 31, 2002. However, transfer authority is statutory authority provided by Congress allowing the transfer of budget authority from one appropriation or fund account to another.<sup>3</sup> B-323792, Jan. 23, 2013; *see also*, GAO, *A Glossary of Terms Used in the Federal Budget Process*, GAO-05-734SP (Washington, D.C.: Sept.2005). Agencies may not transfer amounts between appropriations without specific statutory authority. 31 U.S.C. § 1532. Where Congress statutorily directs an amount to be transferred from one appropriation to another that is also available for the same purpose, we consider such amounts to be supplemental in nature absent language to the contrary.

The OSLTF language is transfer authority, not an appropriation. OSLTF transfers supplement Denali’s lump-sum appropriations to the extent lump-sum amounts are available for activities coincident with OSLTF purposes, specifically, the repair and replacement of bulk fuel storage tanks. There is no indication in the language of Denali’s lump-sum appropriation or in the language of the transfer authority from OSLTF to Denali that Congress intended either amount to be the funding limit for purposes of fuel tank repair and replacement.<sup>4</sup>

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<sup>3</sup> Budget authority is statutory authority provided to agencies allowing them to “enter into financial obligations that will result in immediate or future outlays involving federal funds.” Congressional Budget and Impoundment Control Act, 1974, Pub. L. No. 93-344, § 3(A)(2), 88 Stat. 297, 299 (July 12, 1974), *as amended*.

<sup>4</sup> Language of limitation may include terms such as “not more than,” or “up to” a designated amount, for example. B-238615, Feb. 4, 1991.

Similarly, the IG asked whether RUS grants may be used for expenses related to bulk fuel storage tanks. RUS is statutorily authorized to make grants to Denali to “acquire, construct, extend, upgrade, and otherwise improve energy generation, transmission, or distribution facilities.” 7 U.S.C. § 918a(a)(2). We do not consider such grants a separate appropriation; they are akin to transfer authority. Like the OSLTF transfers, RUS grant amounts supplement Denali’s lump-sum appropriation to the extent lump-sum amounts are available for activities coincident with RUS grants. *Id.*

The IG also asked whether Denali may use its OSLTF transfers not only for the repair and replacement of bulk fuel storage tanks but also to undertake activities associated with broader environmental goals supported by the OSLTF generally.<sup>5</sup> Specifically, Denali envisions safeguarding rivers, lakes, marine waters, and communities from oil spills through the complementary actions of building community bulk fuel storage tanks while working to reduce electrical and heating demand in rural communities, improving building weatherization, and developing alternative energy systems. Denali Response, at 1–2. To determine whether OSLTF amounts transferred to Denali may be used for purposes other than those specified in the statutory transfer language, we apply the “necessary expense rule.” The necessary expense rule recognizes that where an amount is made available for a particular purpose, expenses necessary or incident to the execution of that purpose may also be properly charged to the amount. 6 Comp. Gen. 619, 621 (1927).

Once again, we turn to the language of the statute to guide our analysis. The OSLTF statute provides that OSLTF funds received by Denali are available to “repair or replace bulk fuel storage tanks . . . which are not in compliance with federal law.” Pub. L. No. 105-277, § 329. While preventing oil-related pollution in Alaskan waterways and reducing heating demand in rural communities may be desirable outcomes, Denali has not provided sufficient support that such activities are an expense that is reasonably and logically related to the repair and replacement of bulk fuel tanks. Based on the statutory language and the application of the necessary expense rule, we conclude that OSLTF amounts are not available for these broader environmental purposes.

## CONCLUSION

The statutorily directed transfers from the OSLTF and grants from the RUS supplement Denali’s annual lump-sum appropriation. Where an appropriation is available for a particular purpose and additional amounts are statutorily transferred

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<sup>5</sup> 26 U.S.C. § 9509(c)(1)(D) (“Amounts in the OSLTF shall be available . . . to carry out [certain] subsections . . . of the Federal Water Pollution Control Act with respect to prevention, removal, and enforcement related to oil discharges . . .”).

from other accounts to assist in carrying out that same purpose, the additional amounts are treated as supplementing the agency's appropriation absent language to the contrary. However, OSLTF transfers are not available for purposes other than the repair and replacement of bulk fuel storage tanks.

A handwritten signature in black ink, appearing to read "SA Poling". The signature is fluid and cursive, with a prominent initial "S" and "A".

Susan A. Poling  
General Counsel