

No. 24-1801
(Judge Schwartz)

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

LARIO OIL AND GAS COMPANY,
Plaintiff,
v.

UNITED STATES,
Defendant.

DEFENDANT’S MOTION TO DISMISS PLAINTIFF’S COMPLAINT

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UNITED STATES,	)	
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Defendant.	)	

DEFENDANT’S MOTION TO DISMISS PLAINTIFF’S COMPLAINT

Pursuant to Rule 12(b)(6) of the Rules of the United States Court of Federal Claims (RCFC), defendant, the United States, respectfully requests that this Court dismiss the complaint of plaintiff, Lario Oil and Gas Company (Lario). In support of this motion, we rely upon the complaint filed by plaintiff (Compl.), the exhibits to plaintiff’s complaint, and this brief.¹

INTRODUCTION

The United States agreed to lease oil and gas to Lario, acting, purportedly, pursuant to the Mineral Leasing Act (MLA), and believing the conveyed land all belonged to the United States. After the United States realized that a portion of the land purportedly leased to Lario belonged to the Mandan, Hidatsa, and Arikara Nation (the MHA Nation), the United States partially cancelled the lease and refunded the amounts that Lario paid to the United States in connection with the cancelled portion of the lease. Lario asks this Court to nevertheless enforce the lease in

¹ While the Court must accept the well-pleaded factual allegations contained in the complaint as true in considering a motion to dismiss, the Court is “not limited to the four corners of the complaint.” *Dimare Fresh, Inc. v. United States*, 808 F.3d 1301, 1306 (Fed. Cir. 2015) (quoting 5B Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1357 (3d ed. 2004)). The Court may also look to “matters incorporated by reference or integral to the claim, items subject to judicial notice, [and] matters of public record.” *Id.*

its entirety and hold that, by failing to deliver the land owned by the MHA Nation to Lario, the United States breached the lease.

Lario's complaint should be dismissed. The lease was indisputably issued in violation of the Indian Mineral Leasing Act (IMLA), which specifies the process that the Secretary of the Department of the Interior must follow when he leases Indian-owned lands. The Secretary did not follow these statutorily required practices and, indeed, did not purport to lease the land at issue pursuant to the IMLA. Instead, the Secretary leased land owned by the MHA Nation without ever consulting the MHA Nation, at rates lower than would be paid under the IMLA, and with the amounts specified in the lease paid to the United States rather than the MHA Nation. Holding this lease enforceable in its entirety would undermine the policy concerns animating not only the IMLA but the entire framework of Indian law, which is founded upon a trust relationship between the Federal Government and Indian tribes. The Court should thus find that the lease was void *ab initio* to the extent that it purported to lease Indian-owned land and, as a result, Lario cannot state any claims arising out of the cancelled portion of the lease.

Even if the Court deems the lease enforceable, it should dismiss Lario's complaint because Lario has received the refund contemplated by the statutory scheme. Congress has created a remedy for overpayments made pursuant to the MLA for leases that are cancelled by the Secretary: a refund of the overpaid amounts. The long history of the MLA does not support the view that Congress intended any remedy apart from a refund of overpayments for leases cancelled by the Secretary. Under analogous circumstances, this Court held that Congress's creation of a remedy under the Federal Oil and Gas Royalty Management Act (FOGRMA) foreclosed any breach of contract claim brought by the lessee there. The Court should come to the same conclusion here if it deems the lease enforceable. Because Lario has already received

the remedy contemplated by the MLA, the Court should dismiss the complaint for this alternative reason if it concludes the lease is enforceable.

STATEMENT OF THE ISSUES

1. Whether the lease is void because it was (a) illegally issued in violation of the IMLA and (b) enforcing the lease notwithstanding its illegality would contravene the purpose of the IMLA and other authorities governing the relationship between the Federal Government and Indian tribes.

2. Assuming that the Court decides that the lease is enforceable notwithstanding its illegality, whether the statutory scheme permits any remedies apart from the refunds Lario has already received.

STATEMENT OF THE CASE

I. Legal Background

Mineral Leasing Act (MLA). BLM leases oil and gas in public domain lands pursuant to the Mineral Leasing Act of 1920, 30 U.S.C. §§ 181-263; *see id.* § 226. BLM also leases oil and gas in acquired lands pursuant to the Mineral Leasing Act for Acquired Lands of 1947. *Id.* §§ 351-360. In discharging its contractual duties, BLM exercises authority under the MLA, including the authority to “prescribe necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purposes of this chapter” *Id.* § 189. The authority granted by the MLA is defined as follows: “[d]eposits of . . . oil . . . or gas, and lands containing such deposits *owned by the United States* . . . shall be subject to disposition” *Id.* § 181 (emphasis added). Consistent with this grant of authority, BLM’s regulations recognize that:

Oil and gas in public domain lands and lands returned to the public domain under 43 CFR part 2370 are subject to lease under the Mineral Leasing Act of 1920, as

amended and supplemented (30 U.S.C. 181 et seq.), by acts, including, but not limited to, section 1009 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3148).

43 C.F.R. § 3100.3(a)(1). BLM’s regulations expressly exclude Indian reservations from BLM’s leasing authority under the MLA. *Id.* § 3100.3(a)(2)(ii).

BLM’s leasing process begins when it generates a list of lands available for competitive oil and natural gas leasing and private entities respond by submitting nominations for parcels to be auctioned. *Id.* § 3120.3-1 (effective through June 22, 2024); *id.* § 3120.31. The Secretary must provide 45-days’ notice before offering federal lands for leasing, including a 30-day period for receiving public comments after notice is published in the *Federal Register*. 30 U.S.C. § 226(f). Leases are conditioned upon payment to the government of a royalty of at least 12.5% in amount or value of oil or gas production that is removed or sold from the leased land. *Id.* § 226(b)(1). In addition to royalties, leases are conditioned upon payment of annual rental fees. *Id.* § 226(d).

The primary term for competitive and noncompetitive leases is ten years; however, a lease that meets certain criteria will be extended “for any period during which oil or gas is produced in paying quantities.” *Id.* § 226(e)(2). If lessees choose, and the Secretary approves, they can operate under a cooperative plan for exploration and production, and all leases subject to such plan will be extended if any of the leases covered by the plan qualify for a drilling or production extension. *Id.* § 226(m); 43 C.F.R. 3107.3-1 (effective until June 22, 2024); *id.* § 3107.31(b).

Any MLA lease can be canceled or forfeited if the lessee fails to comply with the statute, the lease’s provisions, or regulations promulgated pursuant to the MLA. 30 U.S.C. § 188(a); 43

C.F.R. § 3108.3(a), (b). The Secretary may also cancel a lease “if improperly issued.” 43 C.F.R. § 3108.3(d) (effective until June 22, 2024); *id.* § 3108.30(d).

Indian Mineral Leasing Act (IMLA). The authority to lease Indian lands for mining purposes, including oil and gas extraction, derives from the IMLA, 25 U.S.C §§ 396a *et seq.*, which was enacted in 1938. Indian Mineral Leasing Act of 1938, Pub. L. No. 75-506, 52 Stat. 347. IMLA leases must be approved by the Secretary and have “terms not to exceed ten years and as long thereafter as minerals are produced in paying quantities.” 30 U.S.C. § 396a The IMLA generally requires tribal mineral leases to be advertised and offered at public auction. *Id.* § 396b. However, there is an exception that permits tribes to lease without auction:

Provided, [t]hat the foregoing provisions shall in no manner restrict the right of tribes organized and incorporated under [the Indian Reorganization Act of 1934 (“IRA”)], to *lease* lands for mining purposes as therein provided and in accordance with the provisions of any constitution and charter adopted by any Indian tribe pursuant to the [IRA].

Id. (second emphasis added). The implementing regulations reflect this exception by permitting Indian tribes to lease mineral interests under the IMLA by competitive bid or by private negotiation. *See* 25 C.F.R. § 211.20.

In addition to providing for leasing, the IMLA addresses operations in a separate statutory provision that requires:

All *operations* under any oil, gas, or other mineral lease issued pursuant to the terms of sections 396a to 396g of this title or any other Act affecting restricted Indian lands shall be subject to the rules and regulations promulgated by the Secretary of the Interior.

25 U.S.C. § 396d (emphasis added). Unlike the IMLA’s auction requirement, this statutory directive has no exception for superseding tribal regulations. This statutory requirement is reflected in the Bureau of Indian Affairs’ (BIA’s) implementing regulations for the IMLA, which require that “written permission must be secured from the Secretary before any operations are

started on the leased premises, in accordance with applicable [BLM] rules and regulations . . . and Orders or Notices to Lessees (NTLs) issued thereunder.” *See* 25 C.F.R. § 211.48(b).

The BIA’s implementing regulations for the IMLA also establish a number of lease terms. Rent must be a minimum of \$2 per acre per year. *Id.* § 211.41(a). Royalties must be a minimum of 16-2/3%, “unless a lower royalty rate is agreed to by the Indian mineral owner and is found to be in the best interest of the Indian mineral owner.” *Id.* § 211.41(b). Other lease terms are also specified by regulation. *See, e.g., id.* § 211.24 (bond requirements); *id.* § 211.28 (unitization and communitization agreements and well spacing); *id.* § 211.51 (surrender of leases).

In sum, the IMLA permits leasing of tribal lands for oil and gas development. The IMLA and its implementing regulations, 25 C.F.R. Part 211, set forth many required terms of IMLA leases and prescribe the application of BLM leasing regulations found in 43 C.F.R. Part 3160, among others, to Indian lands. Therefore, the only avenue and authority for the leasing of Indian lands must originate from the IMLA. At the same time, the IMLA directs that all oil and gas operations conducted pursuant to IMLA leases are subject to the Department of the Interior’s operational regulations.

II. Factual Background

In 1870, an executive order reserved an area of land along the Missouri River in central North Dakota for the MHA Nation, thereby establishing the Fort Berthold Indian Reservation (the Reservation). Compl. ¶ 14. Although the Secretary did not realize this fact at the time the

lease here was issued, the lands subject to the cancelled lease at issue in Lario's complaint have always been part of the Reservation.²

On September 27, 2010, Marathon Oil Company (Marathon) submitted a communitization agreement³ (the communitization agreement) to BLM that covered ten tracts of land totaling approximately 1280 acres (the communitized area). Compl. ¶ 16. These ten tracts included minerals underlying land within the Reservation on the eastern shore of Lake Sakakawea, among other lands. Compl. ¶¶ 13, 16. Under the communitization agreement, Marathon would serve as the operator for production of oil and gas for these ten tracts and any unleased federal lands within the communitized area were to be placed into an interest-bearing account until leased. Compl. ¶¶ 16-17. BLM approved the communitization agreement on November 1, 2010 and assigned it NDM-101124. Compl. ¶ 16. Between November 2010 and July 2011, Marathon drilled and completed one well on a tract in the communitized area. Compl. 18.

In July 2011, BLM held a competitive oil and gas lease sale for two tracts, totaling 236.23 acres, within the communitized area (the leased lands). Compl. ¶ 19. On August 10, 2011, the United States issued lease NDM-102154 (the lease) to Lario, the highest bidder, for an

² The straightforward analysis for the lands subject to the partial cancellation elides a considerably more complex analysis for the Reservation as a whole. Pursuant to the 1949 Takings Act, Pub. L. No. 81-437, 63 Stat. 1026, a portion of the Reservation's land and minerals along the Missouri River was transferred to the United States in fee simple absolute to facilitate the creation of Lake Sakakawea, a large reservoir impounded from the Missouri River by the construction of the Garrison Dam. Compl. 4, ¶¶ 13-14. Following passage of the Fort Berthold Reservation Restoration Act in 1984 (the 1984 Restoration Act), Pub. L. No. 98-602, 98 Stat. 3149, a subset of the lands and minerals taken pursuant to the 1949 Takings Act were retransferred to the MHA Nation while the rest remained in the United States' ownership. Compl. 4, ¶ 15.

³ A communitization agreement, or "drilling agreement[.]" permits "operators who cannot independently develop separate tracts due to well-spacing and well development programs [to] cooperatively develop such tracts." 43 C.F.R. § 3217.11.

initial term of 10 years with a September 1, 2011, effective date. Compl. ¶¶ 19-20. The lease granted Lario the right to drill for oil and gas in the leased lands and required a 12.5% royalty rate on production to be paid to the United States. Compl. ¶ 21. Pursuant to the lease, Lario paid approximately \$1.9 million in lease bonuses and first year's rentals. Compl. ¶ 19. After obtaining the lease, Lario participated with Marathon in developing the oil and gas resources in the communitized area, including the establishment of nine wells directly accessing the leased lands. Compl. ¶ 22-23.

On September 4, 2020, John H. Mehlhoff, the State Director of the Montana/Dakotas State Office of BLM (the state office), contacted Lario to inform it that BLM had discovered that Lario's lease and three of Marathon's leases covered minerals that belonged to the MHA Nation and were held in trust by the United States. Compl. ¶ 24. The state office's letter explained that, when the lease was executed, BLM relied on historical documents demonstrating that certain mineral rights within the Reservation that were taken pursuant to the 1949 Takings Act for the construction of Lake Sakakawea remained with the United States even after the 1984 Restoration Act. Pl. Ex. 3 at 1. However, through additional research, BLM uncovered that the four leases at issue contained Indian Trust lands and minerals that were never taken in 1949 and thus had remained in trust since the establishment of the Reservation in 1870. *Id.* Because some of the minerals in the four leases belonged to the MHA Nation rather than the United States, these leases for federal minerals were erroneously issued. *Id.* The state office recommended that Lario enter an interim agreement with the MHA Nation to keep the wells on the leased land in production while all parties resolved issues raised by BLM's discovery. Pl. Ex. 3 at 2. It further informed Lario that it would need to reach an agreement with the MHA Nation to hold a trust lease. *Id.*

Lario responded on September 18, 2020, stating that it “supports reaching a solution with the MHA Nation allowing for the continued production from the leases” and “would like to negotiate terms on a transfer lease,” and inquired about next steps. Pl. Ex. 5 at 1. On September 25, 2020, the state office replied and offered to stay an action cancelling the lease until November 1, 2020 to allow Lario time to negotiate with the MHA Nation. Compl. ¶ 25; Pl. Ex. 6 at 1. According to the complaint, the MHA Nation refused to negotiate with Lario until it had completed negotiations with Marathon, making the initial November 1, 2020 deadline impracticable. Compl. ¶ 27.

On November 3, 2020, BLM partially cancelled the lease with respect to approximately 168 of the original 236 acres effective the date the lease was issued (the cancellation decision). Compl. ¶ 28; Pl. Ex. 7 at 1. The cancellation decision reiterated that a portion of the leased lands was erroneously leased as federal minerals when, in fact, those minerals were held in trust for the MHA Nation and noted that Lario had not submitted any evidence to dispute BLM’s mineral ownership determination. Pl. Ex. 7 at 1. Although the lease was partially cancelled, the cancellation decision stated that Marathon had reached an agreement with the MHA Nation to permit ongoing production on the erroneously leased lands to continue for 30 days; however, if Lario did not reach an agreement with the MHA Nation in that time, the wells would be closed. *Id.* The cancellation decision further informed Lario that it was entitled to a proportionate refund of the bonus bid, annual rental payments, and royalties it had paid to the United States prior to the partial cancellation of the lease and provided Lario with contact information to submit a refund request. Pl. Ex. 7 at 2. Lario appealed the cancellation decision to the Interior Board of Land Appeals (the IBLA) on December 1, 2020. Compl. ¶ 29.

Over the next three years, Lario and the MHA Nation negotiated while the state office repeatedly extended the deadline for the parties to reach an agreement. Compl. 8-9, ¶ 30. On October 10, 2023, negotiations culminated in a comprehensive Indian minerals development agreement (the IMDA) that was forwarded to the BIA the same day. Compl. ¶ 33. The BIA approved the IMDA on April 5, 2024, and it became effective May 1, 2024. Compl. ¶ 34. On July 12, 2024, Lario moved to dismiss its IBLA appeal, and the IBLA granted the motion on July 15, 2024. Compl. ¶ 35.

Lario alleges that the IMDA's terms are less favorable than the lease's terms, including a higher royalty rate and a larger lease bonus payment. Compl. ¶¶ 36-37. Lario further asserts that the MHA Nation required a lump sum settlement to cover royalties from production predating November 3, 2020, that was greater than the sum of the royalties BLM refunded to Lario. Compl. ¶ 37. Because it took approximately three-and-a-half years from the lease's partial cancellation to when the IMDA became effective, Lario also contends that it lost potential proceeds from the production of oil and gas during that period. *Id.*

On November 1, 2024, Lario filed its complaint against the United States in this Court seeking monetary damages allegedly suffered as a result of the partial cancellation of the lease. Compl. ¶ 37. Lario brings the following two causes of action: (1) breach of contract for cancelling the Lease and "revok[ing] Lario's right to explore for, produce, and sell oil and gas," Compl. ¶ 43; and (2) breach of the implied covenant of good faith and fair dealing for cancelling the Lease which "interfered with Lario's ability to obtain the intended benefits of the Lease," Compl. ¶ 49. Lario does not challenge BLM's determination that some of the minerals belonged to the MHA Nation. Compl. ¶ 4. Nor does it challenge the legality of BLM's cancellation decision.

ARGUMENT

I. Standard of Review

The United States is immune from suit unless it has specifically waived sovereign immunity. *United States v. Testan*, 424 U.S. 392, 399 (1976). “Waivers of the Government’s sovereign immunity, to be effective, must be unequivocally expressed” and its “consent to be sued must be construed strictly in favor of the sovereign and not enlarge[d] . . . beyond what the language requires.” *United States v. Nordic Vill., Inc.*, 503 U.S. 30, 33-34 (1992) (citations and internal quotation marks omitted). The jurisdiction of this Court is established and limited by the Tucker Act. *See* 28 U.S.C. § 1491.

A motion to dismiss pursuant to RCFC 12(b)(6) for failure to state a claim upon which relief may be granted is appropriate when the plaintiff alleges facts that do not entitle him to a remedy. *Godwin v. United States*, 338 F.3d 1374, 1377 (Fed. Cir. 2003). “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The allegations of the complaint must indicate to the court that there is more than “a sheer possibility that the defendant has acted unlawfully.” *Id.* A complaint must be liberally construed, assuming the facts alleged in the complaint are true. *Id.* However, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Id.* (citing *Twombly*, 550 U.S. at 555). In performing its analysis, a court should not place weight upon any assertions in the complaint other than allegations of fact, because legal conclusions are not given deference. *Id.*

II. Lario Cannot State A Claim Because The Lease Is Void

The Government’s disposal of public lands is governed by Federal law. The Supreme Court held long ago that “the Department [of the Interior] has been granted plenary authority over the administration of public lands.” *Best v. Humboldt Placer Min. Co.*, 371 U.S. 334, 336 (1963). “[T]his authority may be constrained if there is ‘some specific provision to the contrary in respect to any particular grant of public land.’” *Silver State Land, LLC v. Schneider*, 843 F.3d 982, 986 (D.C. Cir. 2016) (quoting *Corp. of the Cath. Bishop of Nesqually v. Gibbon*, 158 U.S. 155, 167 (1895)).

Here, the lease was issued in excess of the authority granted by the MLA and in excess of the authority granted by the IMLA. Under these circumstances, the Court should deem the cancelled portion of the lease void and thus unenforceable.

A. The Lease Was Illegally Issued In Violation of The Indian Mineral Leasing Act

Lario does not contest BLM’s decision that the land at issue in the cancellation decision was owned by the MHA Nation. Compl. ¶ 4. Because the complaint starts from the premise that the land at issue belongs to the MHA Nation, the actions at issue here—that is, the Secretary’s purported leasing of lands owned by an Indian tribe pursuant to the MLA—were plainly illegal.

BLM, on behalf of the United States as landowner, is authorized to lease public domain and acquired lands’ minerals pursuant to the MLA. But the MLA does not authorize the leasing of Indian lands. Instead, its authorization is expressly limited as follows: “[d]eposits of ... oil ... or gas, and lands containing such deposits *owned by the United States* ... shall be subject to disposition” 30 U.S.C. § 181. The MLA’s implementing regulations, in fact, expressly exclude “Indian reservations” from BLM’s leasing authority. 43 C.F.R. 3100.3(a)(2)(ii). These limitations are consistent with longstanding principles embodied in the Nonintercourse Act,

which require conveyances of Indian land to be made in accordance with Federal treaty or statute. 25 U.S.C. § 177; *see* 18 Op. Att’y Gen. 235, 238 (July 21, 1885) (stating that with respect to the leasing of Indian land, “the power of the Department [of Interior] to authorize such leases to be made, or that of the President or Secretary to approve or to make the same, if it exists at all, must rest upon some law, and therefore be derived from either a treaty or a statutory provision”).

The authority to lease Indian lands derives not from the MLA but from the IMLA, 25 USC § 396a *et seq.* The implementing regulations of the IMLA, 25 C.F.R. Part 211, prescribe the application of BLM leasing regulations found in 43 C.F.R. Part 3160, among others, to Indian lands. In the absence of authority from the IMLA, BLM is not authorized to lease Indian lands.

Here, the lease at issue in Lario’s complaint was awarded pursuant to the MLA rather than the IMLA. Pl. Ex. 1 at 1 (“The undersigned (page 2) offers to lease all or any of the lands in Item 2 that are available for lease pursuant to the Mineral Lands Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*, the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359), or _____ (other).”). BLM did not purport to act pursuant to the IMLA. Indeed, the reason for the damages claimed by Lario, Compl. ¶ 37, is that leases entered into under the IMLA provide for different bonus and royalty rates as compared to leases entered into under the MLA. *Compare* 25 C.F.R. § 211.41 (rates for leases issued under the IMLA) *with* 30 U.S.C. § 226(f) (rates for leases issued under the MLA).

Because the MLA did not authorize the issuance of the lease to the extent it purported to encompass lands owned by the MHA Nation, the lease was illegal to the extent it purported to convey these lands.

B. The Portion of The Lease At Issue In the Cancellation Decision Must Be Deemed Void To Effectuate The Purposes Of The IMLA And Other Authorities Governing The Federal Government’s Relationship With Indian Tribes

Under the circumstances here, the Court should recognize the portion of the lease at issue in the cancellation decision as void.

Courts have long recognized that a determination that a contract was illegally entered into can result in the contract’s invalidation. *See McMullen v. Hoffman*, 174 U.S. 639, 654 (1899). The United States Court of Claims has thus invalidated a contract that did not accord with applicable procurement regulations, holding that “[w]here illegality is clear, we have no choice but to hold the award and contract to be invalid.” *Schoenbrod v. United States*, 410 F.2d 400, 404 (Ct. Cl. 1969). This is so because a Government official “has only that authority actually conferred by statute or regulation,” and a contract that purports to overstep such authority becomes “initially invalid.” *Id.* The Court reached the same conclusion in *Prestex Inc. v. United States*, where it invalidated a contract issued without competitive bidding and in violation of procurement law. 320 F.2d 367, 372 (Ct. Cl. 1963). In both instances, the Court held that the Government may rescind the invalid contract without subjecting itself to liability. *See Schoenbrod*, 410 F.2d at 404 (“Since the Department of the Interior’s regulations . . . were not followed, the contract at issue here was invalid and of no effect. Therefore, the rescinding of the contract was not a breach.”); *Prestex*, 320 F.2d at 374-75 (holding that the contractor was not entitled to any damages as a result of the Government’s decision to rescind the contract).

In other contexts, the Court of Appeals for the Federal Circuit has held that, “[t]he fact that a contract may be inconsistent with a statutory or regulatory requirement does not *ipso facto* render the contract void.” *Seh Ahn Lee v. United States*, 895 F.3d 1363, 1372 (Fed. Cir. 2018). “If a statute ‘does not specifically provide for the invalidation of contracts which are made in

violation of its provisions,’ the proper inquiry is ‘whether the sanction of nonenforcement is consistent with and essential to effectuating the public policy embodied in the statute.’” *Id.* (cleaned up) (quoting *Am. Tel. & Tel. Co. v. United States*, 177 F.3d 1368, 1374 (Fed. Cir. 1999) (*en banc*) (*AT&T*)); *AT&T*, 177 F.3d at 1374 (“Invalidation of the contract is not a necessary consequence when a statute or regulation has been contravened, but must be considered in light of the statutory or regulatory purpose, with recognition of the strong policy of supporting the integrity of contracts made by and with the United States.”).

Here, the lease’s illegality renders it unenforceable. Although neither the MLA nor the IMLA explicitly specify the consequences of an illegally issued lease, the lease here must be nullified to effectuate the public policy embodied in the laws governing the relationship between the United States and Indian tribes, including the MLA and IMLA. The Supreme Court has recognized the “undisputed existence of a general trust relationship between the United States and the Indian people.” *United States v. Mitchell*, 463 U.S. 206, 225 (1983). The Federal Government, following “a humane and self[-]imposed policy ..., has charged itself with moral obligations of the highest responsibility and trust,” *Seminole Nation v. United States*, 316 U.S. 286, 296-297 (1942). These are not ordinary obligations; they are “obligations to the fulfillment of which the national honor has been committed.” *Heckman v. United States*, 224 U.S. 413, 437 (1912).

“Congress has expressed this policy in a series of statutes that have defined and redefined the trust relationship between the United States and the Indian tribes.” *United States v. Jicarilla Apache Nation*, 564 U.S. 162, 176 (2011). Among the statutes Congress has promulgated to govern relations between the United States and Indian tribes is the IMLA, which established “detailed uniform leasing procedures designed to protect the Indians.” *Montana v. Blackfeet*

Tribe of Indians, 471 U.S. 759, 764 (1985). The “basic purpose” of the IMLA is “to maximize tribal revenues from reservation lands.” *Kerr-McGee Corp. v. Navajo Tribe of Indians*, 471 U.S. 195, 200 (1985). And “[t]he IMLA aims to enhance tribal self-determination by giving Tribes, not the Government, the lead role in negotiating mining leases with third parties.” *United States v. Navajo Nation*, 537 U.S. 488, 508 (2003).

The Secretary’s actions here—purporting to lease land that belongs to an Indian tribe, without tribal involvement, and with the revenues arising out of the lease accruing to the United States rather than the tribe—squarely undermined these statutory purposes. Instead of protecting Indian land, maximizing tribal revenues, and enhancing tribal self-determination, the 2011 lease presumed United States ownership of Indian lands; used Tribal land to maximize Federal revenues; and undermined tribal self-determination by cutting the tribe out of lease negotiations. In light of all this, the Secretary’s actions were contrary to the trust relationship between the Federal Government and Indian tribes. Under these circumstances, the proper remedy is to declare the contract void. *See Shoshone Indian Tribe of the Wind River Rsrv. v. United States*, 672 F.3d 1021, 1038 (Fed. Cir. 2012) (deeming lease void where, because it was not subject to competitive bidding required under IMLA, its issuance did not comply with Nonintercourse Act).

We recognize that, in other contexts, courts have rejected arguments urging that purportedly illegal contracts should be deemed void. But the circumstances in those cases are readily distinguishable from here. Another judge on this Court has concluded that a lease issued because of an administrative error was not void. *Griffin & Griffin Expl., LLC v. United States*, 116 Fed. Cl. 163, 173 (2014) (*Griffin & Griffin*). But *Griffin & Griffin* did not consider a situation where the Secretary was purporting to lease lands that were not owned by the United

States, nor did the decision have any reason to account for the unique considerations applicable to the relationship between the Federal Government and Indian tribes. *Id.* & n.9. Accordingly, *Griffin & Griffin* does not govern here.

This case is also distinguishable from both *AT&T* and *Seh Ahn Lee*, in which the Federal Circuit declined to deem void contracts that were (or may have been) illegal. As is the case with *Griffin & Griffin*, neither of these opinions considered circumstances like the purported lease of Indian-owned land with proceeds going to the United States Treasury. In *AT&T*, the Federal Circuit determined that contract invalidation was improper because Congress expressly stated that the statutory provision at issue was “not [to] be used as the basis for litigating the propriety of an otherwise valid contract.” 177 F.3d at 1375 (emphasis omitted). We are unaware of any legislative materials that similarly counsel against invalidation of leases. In *Seh Ahn Lee*, the Court declined to invalidate the contract at issue because the relevant statutory provision was designed to maximize the agency’s flexibility, not create hard-and-fast rules. 895 F.3d at 1372. Here, by contrast, the IMLA was designed to protect Indian land, enhance the self-determination of Indian tribes, and maximize tribal revenues. *See Blackfeet Tribe*, 471 U.S. at 764; *Kerr-McGee Corp.*, 471 U.S. at 200; *Navajo Nation*, 537 U.S. at 508. Each of these goals that would be thwarted by holding leases like the one here enforceable

Further, the holdings in both *AT&T* and *Seh Ahn Lee* were based, at least in part, on the maxim that “[t]he invalidation of a contract after it has been fully performed is not favored.” *AT&T*, 177 F.3d at 1375; *Seh Ahn Lee*, 895 F.3d at 1372. This principle prevents unjust enrichment if the Government procures a good or service, receives the benefits of that good or service, yet refuses to compensate the contractor because the agreement did not comply with some statutory or regulatory requirement. *See also Prestex*, 320 F.2d at 373 (“No one would

deny that ordinary principles of equity and justice preclude the United States from retaining the services, materials, and benefits and at the same time refusing to pay for them on the ground that the contracting officer's promise was unauthorized, or unenforceable for some other reason"). But this has not happened here. Consistent with the safeguards enacted by Congress to protect lessors who make overpayments, the United States refunded the amounts received from Lario for the cancelled portion of the lease. Compl. ¶¶ 28, 37; 43 U.S.C. § 1734.

The unique circumstances of this case thus compel the conclusion that the lease is void. The conclusion is also consistent with the Department of the Interior's longstanding practice. The Secretary's plenary power to invalidate an illegal land contract was recognized by the Supreme Court more than a century ago:

[I]f, when a patent is about to issue, the secretary should discover a fatal defect in the proceedings, or that by reason of some newly-ascertained fact the patent, if issued, would have to be annulled, and that it would be his duty to ask the attorney general to institute proceedings for its annulment, it would hardly be seriously contended that the secretary might not interfere and prevent the execution of the patent.

Knight v. United Land Ass'n, 142 U.S. 161, 178 (1891). In situations where the Secretary purports to lease lands that he does not have authority to lease, the Interior Board of Land Appeals considers the lease to be void *ab initio*. See *Clayton W. Williams, Jr., Exxon Corp.*, 103 IBLA 192 (July 25, 1988) (where "Federally owned lands that have been legislatively or administratively withdrawn from leasing under the MLA are inadvertently included within a lease, the Department must cancel the lease to the extent that it embraces such lands, since, as to those lands, the lease is a legal nullity."); see also *Gray v. Johnson*, 395 F.2d 533, 536-37 (10th Cir. 1968) (affirming decision of Secretary of the Interior that lease issued in violation of regulatory provisions was void).

Under these circumstances, the only way to safeguard the purposes inherent in the IMLA specifically, and the overarching trust relationship more generally, is to hold the lease void and thus unenforceable.

III. Lario Cannot State A Claim Because It Has Already Received The Remedy Created By Congress’s Longstanding, Comprehensive Scheme Governing Mineral Leases: A Refund Of The Amount It Overpaid

Even assuming that the Court deems the lease enforceable—and it should not—the Court should nevertheless dismiss the complaint for failure to state a claim.

The Supreme Court has “long recognized that an additional remedy in the Court of Claims is foreclosed when it contradicts the limits of a precise remedial scheme.” *United States v. Bormes*, 568 U.S. 6, 13 (2012). *Bormes*, in turn, relied upon *Nichols v. United States*, in which the Supreme Court rejected the proposition that “Congress, after having carefully constructed a revenue system, with ample provisions to redress wrong, intended to give to the taxpayer and importer a further and different remedy.” 74 U.S. (7 Wall.) 122, 131 (1869). In the related context of royalties for oil and gas leases, another judge on this Court, relying upon *Bormes*, recognized that a lessor’s remedies relating to allegedly unpaid royalties were governed by the statutory scheme set out by Congress governing royalties. *BP Expl. & Prod., Inc. v. United States*, 142 Fed. Cl. 579, 599 (2019). Accordingly, although the lessor sought breach of contract damages, the Court ruled that it “cannot independently grant relief to BP under this theory in light of the remedial scheme, which delineates the type of relief BP may seek and the process by which it may claim that relief.” *Id.*

The same principle should govern here. When Congress enacted the MLA, Congress was aware of the massive scope of the lands subject to the MLA: 700,000,000 acres of undeveloped public land that “[n]o one can say . . . do or do not contain deposits equally

valuable than those already discovered.” H.R. Rep. No. 63-668, at 6 (1914). It enacted the MLA against a background that allowed the Secretary to cancel leases for administrative error. *Boesche v. Udall*, 373 U.S. 472, 476 (1963) (explaining that Secretary’s authority to cancel leases issued due to administrative error arose out of the Secretary’s “general managerial powers over the public lands[,]” which were not withdrawn by MLA). Moreover, at the time the MLA was first enacted, Congress had already authorized the Secretary to issue a refund “where it shall appear to the satisfaction of the Secretary of the Interior that any person has heretofore or shall hereafter make any payments to the United States under the public land laws in excess of the amount he was lawfully required to pay under such laws” Pub. L. No. 66-98, 41 Stat. 366 (1919) (authorizing refund of excess payments); *see also* Pub. L. No. 60-66, 35 Stat. 48 (1908) (authorizing refund of excess payments). After the comptroller general concluded that this authority to issue refunds did not apply to leases issued under the MLA, Congress enacted a new provision in 1930 clarifying that the Secretary is authorized to refund “all payments in excess of lawful requirements made under” the MLA. Pub. L. No. 71-456, 46 Stat. 822 (1930); *see* S. Rep. 71-834 (1930) (explaining provision’s genesis). Although Congress has periodically amended the statutes authorizing refunds of overpayments, it has repeatedly reenacted the statutory authority permitting refunds of overpayments. *See* 43 U.S.C. § 1734 (current version of statute providing refund authority, as enacted in the Federal Land Policy and Management Act of 1976).

Nothing in this history suggests that Congress intended a broader remedy than refund of overpayments to lessees whose lease was cancelled because of administrative error. Indeed, the legislative history indicates Congress’s desire to place guardrails around even the constrained liability arising out of the refund authority. *See* H.R. Rep. 66-291, at 2 (1919) (explaining, in

support of bill requiring that refund requests be made within two years, that claims agents and attorneys were bringing a large number of refund claims for land patents issued decades earlier, which “necessitate[d] a very large amount of labor and is expensive to the Government[.]”). It also shows Congress’s focus upon tracking money paid out pursuant to the Secretary’s authority to issue refunds. *See* Pub. L. 60-66, 35 Stat. 48 (requiring the Secretary of the Interior to “at once certify such amounts to the Secretary of the Treasury” once the “Commissioner of the General Land Office shall ascertain the amount of any excess moneys, purchase moneys, or commissions in any case where repayment is authorized by this statute . . .”). Further, at least one court interpreted Congress’s statutory authorization to issue a refund as imposing an obligation upon the Secretary that is enforceable under the Tucker Act. *See United States v. Ohio Oil Co.*, 163 F.2d 633, 637 (10th Cir. 1947).

The sweeping remedies sought by Lario here would undermine this statutory framework in a way that is contrary to the history of these provisions. In light of Congress’s awareness of the massive amount of land it was opening up to oil and gas leases with the MLA, its creation of a remedy in the form of conferring authority upon the Secretary to issue refunds for amounts overpaid under the MLA, and its demonstrated sensitivity to both limiting administrative burden and controlling costs, there is no reason to think that Congress intended the enormous potential liability implied in Lario’s claim. *See Pine Hill Coal Co. v. United States*, 259 U.S. 191, 196 (1922) (“A liability in any case is not to be imposed upon a Government without clear words.”); *Schellfeffer v. United States*, 343 F.2d 936, 942 (Ct. Cl. 1965) (declining to adopt a position that would impose a large financial burden upon the Government “unless the words (or intent) are plain”).

CONCLUSION

For these reasons, we respectfully request that the Court dismiss Lario's complaint.

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