Comments at 3. According to UTM's theory, we should regard the royalty payments as ''an advance payment of restitution to the U.S. Treasury.'' *Id.* Therefore, UTM argues, the federal government should receive none of the money attributable to the royalty issue, in order to preserve the 40:40:20 ratio set forth in the Stripper Well Settlement Agreement and the MSRP.[3]

We reject these arguments to change the disbursement of the Murphy Consent Order funds from the formula set forth in the Stripper Well Settlement Agreement. Under the statute and regulations governing the litigation between Murphy and the DOE, the final Consent Order is a final Order of the DOE which is not subject to administrative appeal. See Department of Energy Organization Act, section 503, 42 U.S.C. 7193; 10 C.F.R. 205.199B. It therefore supersedes the determination of the FERC ALJ and forecloses further inquiry into the issue of whether, and to what extent, the federal government may have benefited from the alleged Murphy overcharges through the royalties paid to USGS. We instead rely on the ERA's statement that ''it is neither practical nor appropriate to quantify the portion of the $10.7 million proposed settlement sum that exceeds the $5.2 million in restitution under the D&PO that can be ascribed to the royalty payment issue.'' Final Consent Order Notice, 59 FR 47315, 47316. As the Court of Appeals recently noted in *Mullins* v. *DOE,* No. 93–1424 (Fed. Cir. March 25, 1995), *petition for rehearing en banc denied* (June 8, 1995), the OHA may rely on ERA's statements about overcharges compromised in settlements when implementing Subpart V refund procedures.

Furthermore, contrary to the Controller's assertion, the ERA did not disturb the ''inviolate'' allocation of the crude oil restitutionary funds by agreeing to settle the Murphy crude oil overcharge litigation. The disbursement of crude oil overcharge funds is based on the total amount of funds collected by the DOE in its enforcement proceedings and then turned over to the OHA for distribution through Subpart V proceedings. It is not based on the potential amount of funds that the DOE could have obtained if it successfully litigated every claim to finality. The ERA correctly noted that the royalty issue was one of the litigation risks which could justifiably be compromised in settlement. See Final Consent Order Notice at 47315, 47317. As courts have noted in the past, Consent Orders result from a process in which each party ''gives up something it might have won in litigation.'' *Consumer Energy Council* v. *Duncan,* No. CA 80–2570 (D.D.C. April 1, 1981), 3 Fed. Energy Guidelines ¶ 26,314 (1981) (*CEC*). Consent Order negotiations, therefore, fall entirely within ERA's prosecutorial discretion. *Id.* See also *Payne 22, Inc.,* 762 F.2d 91 (1985) (Court review of DOE Consent Orders would result ''in chaos''). If we followed the Controller's logic to its natural conclusion, the OHA could never rely on an ERA Consent Order. Instead, the OHA would need to determine what ERA could conceivably have won in completely successful litigation and deduct the amount of any compromise from the federal share of any crude oil refund disbursement under the MSRP. This notion is patently absurd. It would run counter to the considerations of administrative efficiency underlying ERA's settlement authority, and impose an impossible burden on DOE's limited resources. *CEC,* 3 Fed. Energy Guideline at 28,417.

We do not, however, rely solely on these considerations in rejecting the Controller's and UTM's comments on the proper disbursement of funds. We reject the suggested disbursement changes because they stem from a misunderstanding of the federal government's role in the disbursement of funds for indirect restitution. Our recent holding in *Defense Logistics Agency,* 24 DOE ¶ 85,134 (1995) (*DLA*) is relevant here. As we stated in *DLA,* the federal government is not seen as a monolithic entity for the purposes of refund proceedings. Its role in the division of funds is entirely separate from the role of individual agencies as consumers of petroleum products or, in the case of USGS, as a collector of royalties for crude oil produced on federal land. ''[T]he division of monies between the federal government and the states pursuant to the terms of the Settlement Agreement arose as a function of their role as *parens patriae,* as stand-ins for their citizens who, though unidentified, were nonetheless injured by the crude oil overcharges.'' *Id.* at 88,415. In other words, the federal government's 40 percent share of crude oil monies for indirect restitution under the MSRP is not paid to compensate the federal government for any injuries from petroleum overcharges. It is paid to the federal government so that the federal government can compensate the mass of unidentified citizens who all suffered to some degree from the overcharges.

The federal government and the states also have other, different roles in the process. For example, we have held that state and federal agencies may receive refunds as end-users in refund proceedings because their role as purchasers and consumers is entirely separate from their role in providing indirect restitution to their citizens. *Id.; City of Burbank,* 19 DOE ¶ 85,169 (1989) (No double recovery ''is presented by a state serving as a conduit for indirect restitution on behalf of its citizens, while at the same time receiving direct restitution in its own right for petroleum product purchases.''); *Metropolitan Atlanta Rapid Transit Authority,* 17 DOE ¶ 85,243 (1988); *Chicago Transit Authority,* 17 DOE ¶ 85,223 (1988). Pursuant to this reasoning, we have granted direct refunds to a number of states based on their purchases of petroleum products. *See, e.g., The Commonwealth of Massachusetts,* 22 DOE ¶ 85,002 (1992); *State of Minnesota,* 21 DOE ¶ 85,342 (1991); *State of Tennessee,* 21 DOE ¶ 85,334 (1991); *State of New Hampshire,* 21 DOE ¶ 85,234 (1991); *State of Arkansas,* 20 DOE ¶ 85,741 (1990). Similarly, any benefit USGS received from the alleged overcharges through the royalties has no effect upon the disbursement of the Murphy funds to the federal government for indirect restitution.

In addition, if we accepted UTM's argument that we consider royalty payments to the USGS as an advance payment of restitution, we would need to apply the same principle to the states. Several states have leasing provisions for state-owned land which require payments of royalties on mineral rights. To apply this principle consistently, we would be forced to revisit each crude oil overcharge proceeding in which we have disbursed money to the states, determine if the funds came from a firm which paid royalty payments to any state, and retroactively deduct that amount from our disbursement to the states in question. Such a scheme would be hopelessly complex, particularly at this late date, and we would refuse to adopt UTM's arguments for this reason alone.

In conclusion, we reject UTM's argument that we depart from the disbursement of funds set out in the MSRP and the Stripper Well Agreement. Whether one agency of the federal government arguably received some benefit from the alleged overcharges is immaterial to the right of all United States citizens to receive indirect restitution through the 40 percent share of the Murphy Consent Order fund deposited in the United States Treasury under the MSRP. In addition, principles of administrative efficiency would provide ample reason not to deviate

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[3] In view of our determination not to alter the distribution of funds from the formula in the MSRP, there is no need to discuss UTM's suggested method of estimating the percentage of the Murphy funds attributable to the royalty issue.