



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: USDA Forest Service - Authority to Reimburse  
General Appropriations with the Proceeds of  
Forfeited Performance Bond Guarantees.

File: B-226132

Date: February 26, 1988

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### DIGEST

Under section 579c of title 16 of the United States Code, proceeds received from bond forfeitures can reimburse general Forest Service appropriations to the extent of the costs of repairs related to the bond forfeitures. The language of section 579c stating "cover the cost to the United States" for the needed repairs supports this conclusion. Moneys received that exceed these costs should be deposited into the miscellaneous receipts of the Treasury.

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### DECISION

The United States Department of Agriculture, Forest Service, asks whether it can use the proceeds from performance bond forfeitures to reimburse general appropriations used for repairing damage to United States lands. For the reasons given, we find that the Service can make these reimbursements to the extent of the costs of the repairs.

The Forest Service states that it requires performance bond guarantees from occupants of the National Forest System, including commodity contractors. Occasionally these occupants cause damage to lands and do not make the necessary repairs. This results in the Forest Service itself having to make the needed repairs, often prior to collecting the proceeds from the performance bonds. It cites as an example the need to undertake immediate erosion control measures after a fire.

As a remedy, the Service would like to use general appropriations supporting the type of repair involved to pay for the necessary work, and subsequently reimburse that appropriation with the later-received performance bond proceeds. The Forest Service maintains that the law does not specifically authorize such reimbursements, but cites our decision in 64 Comp. Gen. 625 (1985), involving use of forfeited bond proceeds to fund replacement contracts, as

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support for its suggestion. Currently, the Forest Service is using applicable appropriations to make the repairs, but is depositing the later-received bond proceeds into the general fund of the Treasury. In this regard, the Forest Service has informed us that most often it uses the lump-sum appropriation for the "National Forest System" to fund the repairs. E.g., Pub. L. No. 99-591, 100 Stat. 3341-268. Occasionally it uses the "Construction" appropriation instead when road construction is necessary, and may use other applicable lump-sum appropriations.

#### LEGAL DISCUSSION

We think the problem raised by the Forest Service is resolved by section 579c of title 16 of the United States Code. Section 579c provides that moneys received by the United States from bond forfeitures or deposits by occupants for failure to complete performance of required improvement, protection or rehabilitation work shall be covered into the Treasury and are appropriated and made available "to cover the cost to the United States" of any related improvement, protection, or rehabilitation work. The statute establishes the same process for moneys received from judgments, compromises or settlements of claims involving present or potential damage to lands or improvements. Section 579c also provides that moneys received in excess of amounts expended in performing required work shall be transferred to the Treasury as miscellaneous receipts.

When repairs must be undertaken before bond forfeitures are received, the Forest Service would have a responsibility to act immediately and would have to use available appropriations to make the repairs. If this had occurred prior to enactment of section 579c, the Forest Service would have used available general appropriations for the repairs. Passage of section 579c did nothing to diminish the Forest Service's need to act. Thus, it would still have to use the appropriation generally available for the repairs.

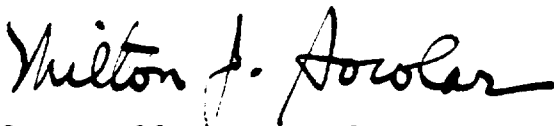
In the past, the Forest Service was not authorized to apply defaulted bond proceeds, or any other proceeds, received after expenditure of general appropriations on repairs, to the costs incurred by the general appropriation. All such proceeds had to be deposited into the Treasury as miscellaneous receipts. To some extent, this made no sense since the moneys received were intended to cover the costs of repairing damage to Forest Service lands.

Although its legislative history provides little guidance on section 579's intention, we think it reasonable to construe it as establishing a system for funding repairs which is intended to operate in conjunction with generally available

appropriations. The language of section 579c is consistent with this view. We interpret the language "cover the cost to the United States of any improvement, protection or rehabilitation work . . ." as meaning to cover the costs of the repairs whether initially funded from general appropriations or from deposits in the 579c account. Thus, when proceeds from bond forfeitures subsequently are received, they are to be covered back into the general appropriation used to the extent of the costs.

The requirement in section 579c to deposit into the Treasury as miscellaneous receipts proceeds from forfeited performance bonds that exceed repair costs is also consistent with our view. That requirement also evidences an intention that moneys deposited by non-government users of Forest Service lands for repairing damages attributable to such use, be retained by the Forest Service.

We emphasize that our conclusion in no way impinges on our long-established principle that when an agency has a specific appropriation for a particular expense and also a general appropriation broad enough to cover the same expense, it must use the specific appropriation regardless of the amount left in the appropriation. See, e.g., B-202362, March 24, 1981. Also applicable is the rule that when an agency has two specific appropriations available for the same expense, an agency's election to use one will require the agency to continue using the one selected to the exclusion of the other. 59 Comp. Gen. 518, 520-21 (1980). The exhaustion of the elected appropriation does not justify using the funds of the other appropriation. See 31 U.S.C. § 1532. These rules, however, are not applicable in this situation.<sup>1/</sup> We construe section 579c as being intended to complement general appropriations, and not as establishing an equally available appropriation or a separate specific appropriation to be used to the exclusion of general appropriations.

*for*   
Comptroller General  
of the United States

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<sup>1/</sup> Our decision in 64 Comp. Gen. 625 (1985), involving use of forfeited bond proceeds, also is not directly applicable.