

**DECISION**



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

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FILE: B-166506

DATE: MAY 26 1976

MATTER OF: Department of Agriculture—Cooperative Agreements

DIGEST: Department of Agriculture (Agriculture) may, pursuant to section 5 of Granger-Thye Act, enter into cooperative agreements with National Forest permittees whereby Agriculture maintains and operates waste disposal systems, permittees pay Agriculture their pro rata share of expenses for this operation and maintenance, and Agriculture deposits payments in cooperative trust accounts.

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The Department of Agriculture (Agriculture) has requested our opinion as to " \* \* \* whether the definition of 'work' as used in Section 5 of the Granger-Thye Act includes the operation and maintenance of sewage collection and treatment systems, water systems, and sanitary landfills, and thus, whether the pro rata share that is for such work may be treated as cooperative deposits to be used along with appropriated funds to operate and maintain the sewage collection and treatment system."

Section 5 of the so-called Granger-Thye Act, 16 U.S.C. § 572 (1970), provides:

"(a) The Secretary of Agriculture is authorized, where the public interest justifies, to cooperate with or assist public and private agencies, organizations, institutions, and persons in performing work on land in State, county, municipal, or private ownership, situated within or near a national forest, for which the administering agency, owner, or other interested party deposits in one or more payments a sufficient sum to cover the total estimated cost of the work to be done for the benefit of the depositor, for administration, protection, improvement, reforestation, and such other kinds of work as the Forest Service is authorized to do on lands of the United States: Provided, That the United States shall not be liable to the depositor or landowner for any damage incident to the performance of such work.

"(b) Cooperation and assistance on the same basis as that authorized in subsection (a) of this section is authorized also in the performance of any such kinds of work in connection with the occupancy or use of the national forests or other lands administered by the Forest Service.

"(c) Moneys deposited under this section shall be covered into the Treasury and shall constitute a special fund, which is made available until expended for payment of the cost of work performed by the Forest Service and for refunds to depositors of amounts deposited by them in excess of their share of said cost: Provided, That when deposits are received for a number of similar types of work on adjacent or overlapping areas, or on areas which in the aggregate are determined to cover a single work unit, they may be expended on such combined areas for the purposes for which deposited, in which event refunds to the depositors of the total amount of the excess deposits involved will be made on a proportionate basis: Provided further, That when so provided by written agreement payment for work undertaken pursuant to this section may be made from any Forest Service appropriation available for similar types of work, and reimbursement received from said agencies, organizations, institutions, or persons covering their proportionate share of the cost and the funds received as reimbursement shall be deposited to the credit of the Forest Service appropriation from which initially paid or to appropriations for similar purposes currently available at the time of deposit: \* \* \*."

Agriculture states that the Forest Service, one of its agencies, has been installing and improving sewage collection and treatment systems and solid waste facilities (sanitary landfills) serving national forest lands, in furtherance of required pollution abatement programs. In a number of instances permittees occupying national forest lands also need to improve their waste disposal facilities to meet environmental quality standards. Agriculture states that section 5 of the Granger-Thye Act, supra, gives the Secretary of Agriculture authority to construct and develop waste disposal systems with capacity in excess of that needed by the Government, in order to serve permittees

who agree to make cooperative deposits for their proportionate share of a system. Agriculture proposes to institute a similar method of paying for the operation and maintenance work necessary to provide service to cooperating permittees. It would collect from national forest permittees their pro rata share of the expenses of operating and maintaining joint waste disposal systems, water facilities, and sanitary landfills, and would use these funds, along with its appropriations, to pay for the services. Payments by permittees would be placed in cooperative trust accounts for the period of time between their collection and their expenditure, with excess deposits being refunded to the permittees.

Some uncertainty is expressed as to the legality of the foregoing proposal in view of our decision dated October 24, 1944, reaffirmed on April 7, 1945, B-44626. This decision held, in part, that payments received from National Forest permittees as a pro rata share of the cost for garbage disposal services furnished by the Forest Service did not qualify as "contributions toward cooperative work" under 16 U.S.C. § 498 (1970),<sup>\*</sup> but represented "a charge for services rendered or facilities used" to be deposited into the Treasury as miscellaneous receipts under 16 U.S.C. § 499 (1970), which provides in part:

"All money received by or on account of the Forest Service for timber, or from any other source of national-forest revenue, including moneys received from sale of products from or for the use of lands in national forests \* \* \* shall be covered into the Treasury of the United States as a miscellaneous receipt \* \* \*."

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\* This section, which has remained unchanged since 1944, provides:

"All moneys received as contributions toward cooperative work in forest investigations, or the protection and improvement of the national forests, shall be covered into the Treasury and shall constitute a special fund, which is appropriated and made available until expended, as the Secretary of Agriculture may direct, for the payment of the expenses of said investigations, protection, or improvements by the Forest Service, and for refunds to the contributors of amounts heretofore or hereafter paid in by them in excess of their share of the cost of said investigations, protection, or improvements."

It should be noted that the aforementioned decision was rendered 6 years before enactment of the Granger-Thye Act and many years before enactment of other environmental protection laws, such as the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq., the Solid Waste Disposal Act, as amended, 42 U.S.C. § 3251 et seq., and the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq. Also, it is not completely clear from a reading of our two decisions cited above whether there was, in fact, a cooperative agreement involved. In any event, it is unnecessary to specifically resolve this question since we are satisfied that the instant proposal by Agriculture is appropriate under section 5(b) of the Granger-Thye Act.

The purpose of section 5(b) of the Act was explained in the applicable House and Senate Committee reports, H.R. Rep. No. 1189, S. Rep. No. 1069, 81st Cong., 1st Sess., 5 (1949), as follows:

"In connection with utilization of the land or resources of the national forests permittees sometimes are confronted with types of work for which they have neither trained personnel nor suitable equipment. In many instances the Forest Service has available supervisory personnel and appropriate equipment and could do such work, if payment therefor by the permittee could be used by the Forest Service, thus avoiding depletion of Forest Service funds. In some instances this would actually reduce the cost of Government work. Subsection (b) will authorize such collaboration with permittees."

We agree with Agriculture that construction of the waste treatment and other facilities here involved under cooperative agreements for joint use of the Forest Service and permittees constitutes cooperative work within the language and intent of section 5(b). There seems to be no reason why the same conclusion would not apply to work relating to the operation and maintenance of such facilities.

Moreover, we believe that the Act approved December 12, 1975, Pub. L. No. 94-148, 89 Stat. 804, is relevant to this

matter. Section 1 of Pub. L. No. 94-148, 16 U.S.C.A. § 565a-1, provides in part:

"\* \* \* to facilitate the administration of the programs and activities of the Forest Service, the Secretary is authorized to negotiate and enter into cooperative agreements with public or private agencies, organizations, institutions, or persons to construct, operate, and maintain cooperative pollution abatement equipment and facilities, including sanitary landfills, water systems, and sewer systems; to engage in cooperative man-power and job training and development programs; to develop and publish cooperative environmental education and forest history materials; and to perform forestry protection, timber stand improvement, debris removal, and thinning of trees. The Secretary may enter into aforesaid agreements when he determines that the public interest will be benefited and that there exists a mutual interest other than monetary considerations. In such cooperative arrangements, the Secretary is authorized to advance or reimburse funds to cooperators from any Forest Service appropriation available for similar kinds of work or by furnishing or sharing materials, supplies, facilities, or equipment. \* \* \*."

According to the House Agriculture Committee report, this legislation--

"\* \* \* is necessary to clarify and expand existing authority relating to cooperative agreements which may be entered into by the Forest Service. The bill will provide clear authority to the Forest Service to engage in cooperative activities to construct, operate, and maintain cooperative pollution abatement equipment and facilities, including sanitary landfills, water systems, and sewer systems \* \* \*." H.R. Rep. No. 94-611, 1-2 (1975).

B-166506

Section 3 of Pub. L. No. 94-148, 16 U.S.C.A. § 565a-3, states that this act does not limit or modify the Secretary's authority to enter into cooperative arrangements otherwise authorized by law. Thus section 5(b) of the Granger-Thye Act remains applicable in the instant case. On the other hand, Pub. L. No. 94-148 does, in our view, reenforce the conclusion that construction, operation, and maintenance of waste treatment and related systems are an appropriate subject for cooperative agreements between the Forest Service and National Forest permittees.

Accordingly, it is our opinion that the pro rata share paid by permittees under cooperative agreements for the operation and maintenance (as well as construction) of sewage collection and treatment systems, water systems, and sanitary landfills may be treated as cooperative deposits pursuant to section 5 of the Granger-Thye Act.

RAMMELER

Deputy

Comptroller General  
of the United States