



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Forest Service--Appropriations for Fighting
Forest Fires

File: B-231711

Date: March 28, 1989

DIGEST

1. The fiscal year 1987 appropriation for the National Forest System provides \$263,323,000 of 2-year funds for, among other things, forest firefighting, out of a lump-sum appropriation of \$1,158,294,000. The appropriation language "shall remain available until September 30, 1988" establishes a limit only on the amount of funds available for 2 years, not a limitation on the maximum amount of funds available for firefighting. Thus, obligations incurred for forest firefighting during fiscal year 1987 may be paid from both the 1-year and 2-year funds.
2. Although Congressional committee reports specified that \$125,000,000 in fiscal year 1988 appropriations was provided to liquidate firefighting obligations incurred in the previous year, the Forest Service, Department of Agriculture, may use more than \$125,000,000 of fiscal year 1988 appropriations for that purpose. Where lump-sum appropriations are involved, indications in committee reports and other legislative history as to how funds should or are expected to be spent do not represent legally binding requirements. 55 Comp. Gen. 307(1975).
3. The Forest Service may repay the funds that were advanced to it from the Knutson-Vandenberg special trust fund for fighting forest fires. Title 16, United States Code, Section 556d authorizes advances of funds under any of the Forest Service's appropriation accounts for fighting forest fires in emergency cases but does not mandate repayment.

DECISION

A certifying officer of the Forest Service, United States Department of Agriculture, has requested our views on three

0-5020/138304

issues regarding the use of appropriated funds to pay the cost of fighting forest fires during fiscal year 1987.

BACKGROUND

According to the certifying officer, the National Forest System (NFS) Fiscal Year 1987 appropriation consists of a lump-sum amount containing both 1-year and 2-year funds. Sums for firefighting are specifically mentioned in the 2-year category. Since the extent of forest fires is unpredictable in any one year, funds provided for fighting forest fires are often insufficient to pay the costs of emergency firefighting.^{1/} Under the authority of 16 U.S.C. § 556d, the Forest Service may advance money from any other Forest Service appropriation for fighting forest fires in emergency cases. Thus, in the past, the Forest Service has advanced unobligated balances of the Knutson-Vandenburg fund (K-V fund) to cover firefighting expenses. In order to repay the K-V fund for those advances, the Forest Service usually makes annual requests for supplemental appropriations.

The certifying officer explains that for fiscal year 1987, Congress designated \$263,323,000 of the NFS lump-sum appropriation of \$1,158,294,000 as 2-year moneys available for various purposes including firefighting expenses. Due to the heavy firefighting activities in fiscal year 1987, the Fighting Forest Fires (FFF) fund had a deficit of \$267,000,000. According to the certifying officer, the fiscal year 1988 appropriation act included \$125,000,000 in the NFS lump-sum appropriation to liquidate firefighting obligations incurred in the preceding year. He then states:

"If we utilize the \$125,000,000 to cover part of the \$267,000,000 deficit, the FY 1987/88 appropriation will still have a \$142,000,000 deficit"

^{1/} The certifying officer refers to firefighting moneys as the Fighting Forest Fire (FFF) program; we shall do the same. The program is described as providing most of the direct expenses for fighting wildfires on or threatening NFS lands and for rehabilitating burned over NFS lands. FFF funds are used only to the extent necessary under emergency conditions. Department of Interior and Related Agencies Appropriation for 1988: Hearings on Budget Justifications, Part 2, 100th Cong., 1st Sess. 135 (1987).

Because the Forest Service in fiscal year 1988 did not request a supplemental appropriation, the certifying officer asks the following questions:

1. Can I, as a certifying officer, make payments in excess of the amount authorized in the FY 1987 and FY 1988 Appropriation Acts for the FY 1987 FFF funding, if no additional supplemental is requested to cover the deficit?
2. Can I, as a certifying officer, advance cash from the other available appropriations to the FY 1987 FFF fund provided that there is not a request for a supplemental appropriation from which to pay the advance?
3. If I cannot make an advance, do I have to cover the deficit from 2-year funds or are all funds (2-year and annual) within the FY 1987 National Forest System (NFS) appropriation available to cover the deficit?

We conclude that payments in excess of the lump-sum amount authorized in the NFS appropriation may not be made. Any FFF deficits may be covered from all available appropriated funds (both 1-year and 2-year). Additionally, 16 U.S.C. § 556d authorizes the Forest Service to advance money from any of its appropriations to fight forest fires, but does not by its own terms require repayment of amounts advanced. Whether the K-V fund imposes such an obligation on the Forest Service we need not now decide although, in any event, we do not object to repayment of amounts advanced from the K-V fund.

DISCUSSION

Excess Payments Fiscal Year 1987

The fiscal year 1987 appropriation for the Forest Service reads in pertinent part as follows:

For necessary expenses of the Forest Service, not otherwise provided for, for management, protection, improvement, and utilization of the National Forest System, . . . \$1,158,294,000, of which \$263,323,000 for reforestation and timber stand improvement, cooperative law enforcement, firefighting, and maintenance of forest development roads and trails shall remain available for obligation until September 30, 1988.

Pub. L. No. 99-500, 100 Stat. 1783-268 (1986) (emphasis added).^{2/}

In the absence of specific statutory authority, expenditures or obligations may not be made in excess of amounts legally available in an appropriation. 31 U.S.C. § 1341 (1982). Clearly, the Forest Service may not exceed its fiscal year 1987 lump-sum appropriation of \$1,158,294,000. However, in our view, the language "of which \$263,323,000 for . . . firefighting . . . shall remain available for obligation until September 30, 1988,"^{3/} does not represent a line-item limitation or a cap on the amount of money available for obligation for firefighting. Rather, this language expresses the availability of a specific amount as to time--two years instead of one.

Congress frequently earmarks part of a lump-sum appropriation for a particular purpose and indicates whether such earmarks are maximums or minimums by using key phrases such as "not to exceed". See 64 Comp. Gen. 263 (1985). In the instant case, Congress used no such modifiers. On the contrary, the language used-- "\$1,158,294,000, of which \$263,323,000 . . . shall remain available for obligation until September 30, 1988"--clearly deals with the period of availability for the designated funds.

Therefore, the certifying officer may use all available funds within the 1987 NFS appropriation (1-year and 2-year) to cover the firefighting deficit in fiscal year 1987, so long as the total lump-sum appropriation is not exceeded.

Fiscal Year 1988

The fiscal year 1988 appropriation for the Forest Service specifies that liquidating prior year firefighting obligations is an available purpose of the appropriation. The statute states:

"For necessary expenses of the Forest Service,
not otherwise provided for, for management,

^{2/} Clerical errors in Pub. L. No. 99-500 caused a corrected version of this appropriation act to be signed into law, see Pub. L. No. 99-591, 100 Stat. 3341 (1986).

^{3/} Senate Amendment No. 102 added "firefighting" to the two year appropriation language in fiscal year 1987. See H.R. Conf. Rep. No. 1002, 99th Cong., 2d Sess. at 52 (1986).

protection, improvement, and utilization of the National Forest System, and for liquidation of obligations made in the preceding fiscal years pursuant to 16 U.S.C. 556d for forest firefighting, . . . \$1,243,391,000"

Pub. L. No. 100-202, 101 Stat. 1329-235 (1987) (emphasis added).

The legislative history of the fiscal year 1988 appropriations act amplifies Congress' intent regarding the availability of funds for liquidation of prior year firefighting obligations:

"The [Forest] Service is expending such sums as is necessary to fight these unusually heavy fires. The Committee is recommending \$125,000,000 to repay those accounts from which the [Forest] Service is currently borrowing funds and expects the [Forest] Service to request supplemental funds to repay those amounts if the expenditures exceed \$125,000,000."

S. Rep. No. 165, 100th Cong., 1st Sess. at 80 (1987).

This Office has long adhered to the rule that where lump sums are involved, indicia in committee reports and other legislative history as to how funds should or are expected to be spent do not establish any legal requirements on federal agencies unless they are specified in the appropriation act itself. See 55 Comp. Gen. 307 (1975); B-193282, December 21, 1978. Absent a binding legal requirement, the Forest Service retains the budget flexibility to meet unforeseen circumstances or emergencies, such as forest fires. Thus, although the legislative history of the fiscal year 1988 act recommends \$125,000,000 for liquidating prior fiscal year debt, the recommendations are not legally binding since Congress has chosen not to impose its recommendation as a matter of law.^{4/}

^{4/} As a practical matter, however, agencies typically will attempt to honor wishes expressed by an appropriation committee in legislative history in order to maintain good relations with the committee in the future. See 55 Comp. Gen. at 325 (1975)

Advances from other Appropriations

A transfer of funds from one appropriation account to another is prohibited without statutory authority. 31 U.S.C. § 1532. However, section 556d of title 16, United States Code, authorizes the Forest Service to advance money under any of its appropriations for fighting forest fires in emergency cases.

As explained above, the certifying officer asserts that in order to legally advance funds from the K-V fund, the agency must contemplate repayment of the advance to replenish the K-V fund. In previous years, an advance of funds was deemed appropriate because a supplemental appropriation request was always submitted in order to repay the advance from the K-V fund. In fiscal year 1988 the Forest Service did not request a supplemental appropriation and did not contemplate repayment at that time.^{5/} The Department of Agriculture, however, is of the opinion that 16 U.S.C. § 556d does not require replenishment of funds to the account from which funds were transferred.^{6/}

We conclude that 16 U.S.C. § 556d does not require, by its own terms, repayment of advances made under that provision. The text of 556d merely provides that "advances" may be made from other appropriations for fighting forest fires in emergency cases. The provision does not address the issue of repayment of the funds advanced. The use in the statute of the word "advance" sheds no light on the issue since it has two commonly accepted definitions--one implies repayment, the other does not. It can mean to pay money or render value in advance of a contingency or before the money is due. See Black's Law Dictionary 48 (5th ed. 1979). It

^{5/} Currently, the fiscal year 1990 budget submitted to Congress requests a \$250 million supplemental to repay money borrowed from the K-V fund to finance obligations incurred for firefighting. Budget of the United States Government 1990 at II-5.

^{6/} Moreover, the Office of Management and Budget (OMB) Circular A-34 defines a statutorily authorized redistribution of appropriations which does not benefit the transferring account as a "transfer". According to Circular A-34, an example of such authority is the authority of the Forest Service to transfer funds for fighting forest fires, an apparent reference to Section 556d. OMB Cir. A-34 § 81.3.

also can mean to loan money with an expectation of repayment. Id.

The sparse legislative history of the provision reflects that, as originally enacted, the purpose of the statute was twofold: (1) to advance funds to Forest Service employees so that they would not have to pay for government expenses with their own money and (2) to allow supervisors at forest fire sites to have ready access to moneys in order to immediately recruit and pay firefighting personnel in emergency cases. Hearings on Estimates of Appropriations for the Fiscal Year Ending June 30, 1909 Before the House Comm. on Agriculture, 60th Cong., 1 Sess. 345-346 (1908). In neither situation was repayment of advanced funds at issue, let alone expected.^{7/}

Although we conclude that 16 U.S.C. § 556d does not require repayment, we believe that the funds taken from the K-V account--from which we understand most advances are drawn for emergency forest firefighting--may be treated as temporary advances and have no objection to the current Forest Service practice of repayment of advances from the fund.

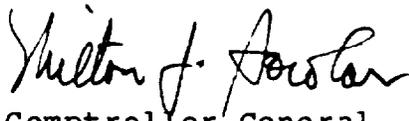
The K-V fund was established by the Knutson-Vandenberg Act of June 9, 1930, Ch. 416, § 3, 46 Stat. 527, codified at 16 U.S.C. §§ 576-576b. The law authorizes the Secretary of Agriculture to require National Forest timber purchasers to make deposits to finance the cost of reforestation and other resource management activities to establish, protect and improve the renewable resources on National Forest land. Forest Service Manual, Title 6500, § 6512.3 (1982). The payments are deposited into a special Treasury fund^{8/} which is appropriated and made available without fiscal year limitation for the above stated purposes as the Secretary of Agriculture may direct. 16 U.S.C. § 576b.

Treating advances from K-V funds as temporary with an expectation of repayment would seem consistent with the concept of applying receipts in the K-V account toward the purposes for which the deposits were initially received from

^{7/} The statute originally required chiefs of field parties to give bonds for moneys advanced. This provision was eliminated by Pub. L. No. 92-310, § 231 (v), 86 Stat. 211 (1972).

^{8/} The Treasury Department designates the K-V fund as a trust fund. 31 U.S.C. § 1321(a)(13).

the public. While the funds may not be needed at the time of the "advance", they may be needed in the future for K-V fund purposes. Furthermore, in recent appropriation actions Congress has impliedly approved this repayment practice by providing funds to repay advances borrowed from other accounts under § 556d. See, e.g., Pub. L. No. 100-202, 101 Stat. 1329-235 (1987), S. Rep. No. 165, *supra*, at 80 (emphasis added); see also S. Rep. No. 397, 99th Cong., 2nd Sess. at 64 (1986).^{9/} In any event, given the current Forest Service practice of repaying K-V fund advances we need not decide whether, as a legal matter, the statute authorizing the K-V fund imposes an obligation on the Forest Service to repay advances made under authority of 16 U.S.C. 556d.

for 
Comptroller General
of the United States

9/ The NFS appropriation for fiscal year 1989 is drafted differently than the fiscal year 1987 and 1988 statutes. The fiscal year 1989 statute does not contain a reference to 16 U.S.C. § 556d but merely states:

"For necessary expenses of the forest service . . . and for reimbursement to other appropriation accounts from which funds were transferred in the preceding fiscal years for forest firefighting" (emphasis added) Pub. L. 100-446, H.R. 4867-31 (1988)

Furthermore, the administrative provisions contained in the Forest Service appropriation for fiscal years 1989 provide that any appropriations or funds available to the Forest Service may be transferred to the NFS for forest firefighting. *Id.* at H.R. 4817-35.