

Memorandum

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Date: February 8, 1989

To: Director, AFMD/FA - Dennis J. Duquette

Thru: Assistant General Counsel, OGC/AFMD - Jeffrey A. Jacobson *JAJ*

From: Senior Attorney, OGC/AFMD - Richard T. Cambosos *Richard T Cambosos*

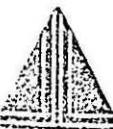
Subject: Possible violations of the Antideficiency Act by the Forest Service (Job Code 917108; B-230117)

This responds to issues raised by your memorandum of October 12, 1988, concerning possible violations of the Antideficiency Act by the Forest Service during fiscal year 1987. These issues arose during your examination (job code 917106) of fiscal year 1987 financial statements for certain agencies within the Department of Agriculture. For various reasons, an audit of the Forest Service's fiscal year 1987 financial statements was not completed. We understand that the issues presented in your memorandum will be addressed in your examination of the Forest Service's fiscal year 1988 financial statements conducted under job code 917108.

The issues raised by your memorandum and our answers to them are summarized below:

1. Was it proper for the Forest Service to treat a request for a supplemental appropriation to fight forest fires for fiscal year 1987 as an anticipated receivable and to record it as a reimbursement on the SF 133 for fiscal year 1987 rather than record the amount of the request as a deficiency in the "National Forest System" (NFS) account on the SF 133 for fiscal year 1987?

Answer: It was improper for the Forest Service to treat a supplemental appropriation request for fighting forest fires as an anticipated receivable and to record it as a



reimbursement on the SF-133 for fiscal year 1987 since this is prohibited by OMB Cir. No. A-34, § 31.4. If obligations exceeded budgetary resources otherwise available in the NFS account, then they should have been recorded as a deficiency in the NFS account.

2. Was it proper to use the NFS appropriation account enacted by Pub. L. No. 99-591, 100 Stat. 3341-268 (1986) to liquidate obligations incurred by the Forest Service for fighting forest fires during fiscal year 1986?

Answer: It was proper for the Forest Service to use funds appropriated by Pub. L. No. 99-591 for the NFS account to liquidate obligations incurred during fiscal year 1986 in fighting forest fires since this was authorized by the language of Pub. L. No. 99-591.

3. Was it proper to advance funds from the Knutsen-Vandenburg (K-V) trust fund account to the NFS account during fiscal year 1986 for the purpose of fighting forest fires?

Answer: It was proper to advance funds from the K-V trust fund to the NFS account for the purpose of fighting forest fires since that was authorized by 16 U.S.C. § 556d.

4. Was it proper to treat the advance of funds from the K-V trust fund in 1986 as an expenditure transaction and establish an account payable in the NFS account to record the advance/transfer?

Answer: It was proper to treat the advance of funds from the K-V trust fund as an expenditure transaction and record it as an account payable in the NFS account since treatment as an expenditure transaction was required by I TFM 2-2060.20 (see also, OMB Cir. No. A-34, §§ 81.2, 81.3) and the Congress had authorized the repayment of accounts from which advances were made to fight forest fires.

5. Did the Forest Service violate the Antideficiency Act by making payments to the states under 16 U.S.C. § 500 and to the State of Minnesota under 16 U.S.C. §§ 577g, 577g-1, from the accounts 12x5201 and 12x5213, respectively, before funds sufficient to cover the payments were transferred to these accounts from the National Forest Fund account - 12x5008?

Answer: Making payments to the states and to Minnesota from the 12x5201 and 12x5213 accounts, respectively, before sufficient funds to cover the payments are transferred to these accounts may not be a desirable administrative

practice. However, this practice constitutes a violation of the Antideficiency Act only when there are insufficient funds available in the National Forest Fund account to cover the payments.

A detailed analysis of these issues is attached. The attachment also discussed some background information to put our analysis into context. Since some aspects of the inquiry indicate recurring funding problems for the Forest Service's fighting forest fires, the attachment contains general guidance for use when reviewing subsequent fiscal year financial statements of the Forest Service. Finally, we currently have under consideration a request for a decision from a Forest Service certifying officer on a number of questions relating to payments for fighting forest fires during 1987 which may be relevant to your review of Forest Service's financial statements. We will provide you with a copy of our decision when it is issued.

Attachment

cc: Mr. Wolf, AFMD
Mr. Crowley, AFMD
Mr. Hinchman, OGC
Mr. Kepplinger, OGC
Ms. Summersett, AFMD
Mr. McKeever, AFMD

BACKGROUND

The Antideficiency Act

The Antideficiency Act^{1/} imposes limitations on the obligation and expenditure of appropriations by agencies so that agencies will operate within the amounts appropriated for various purposes by the Congress. Under the Antideficiency Act, an officer or employee of an agency may not (1) make or authorize an expenditure or obligation in excess of an amount available in an appropriation or fund for expenditure or obligation; or (2) make a contract or obligation for the payment of money in advance of an appropriation unless authorized by law.^{2/} However, the Antideficiency Act also authorizes agencies to accept voluntary services in the absence of adequate appropriations to pay for them in cases of "emergencies involving the safety of human life or the protection of property."^{3/} We have interpreted this provision to authorize an agency to incur obligations for services of employees even when there are insufficient funds available to pay for these services so long as the employees are assigned to emergency duty "involving the safety of human life or the protection of property or duties reasonably necessary to support those so engaged." However, no payments may be made to liquidate these obligations unless amounts sufficient to cover the payments are available in appropriations.^{4/}

The Antideficiency Act also requires that appropriations available for a definite period of time be apportioned to prevent obligation or expenditure at a rate that would indicate a necessity for a deficiency or supplemental appropriation for that period. Appropriations for an indefinite period must be apportioned to achieve the most effective and economical use. The Act specifies the

1/ 31 U.S.C.A. §§^{1/}1341, ^{2/}1342, ^{3/}1349-1351, ^{4/}1511-1519 (West Supp. 1988).

2/ 31 U.S.C. §^{1/}1341 (1982).

3/ 31 U.S.C. §^{1/}1342 (1982).

4/ ^{1/}B-208985, October 5, 1982 and ^{2/}B-208985, October 29, 1982.

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procedure for apportioning the appropriation.5/ The Office of Management and Budget apportions and reapportions appropriations for executive agencies including the Department of Agriculture and the Forest Service. Officers or employees are prohibited from making or authorizing an expenditure or obligation exceeding the apportionment.6/ However, an official may make, and the head of the agency may request, an apportionment that would indicate a necessity for a deficiency or supplemental appropriation when the official or agency head decides that the action is required because of an emergency involving the safety of human life or the protection of property.7/ Additionally, trust funds or working funds may be exempted from apportionment by OMB if an expenditure from the fund has no significant effect on the financial operations of the United States Government.8/ If an officer or employee (1) makes obligations or expenditures in excess of appropriations available or the apportionment or (2) enters into a contract in advance of an appropriation, the agency is required to report immediately to the President and the Congress all relevant facts and a statement of the actions taken.9/ Instructions on implementing the Antideficiency Act are provided executive agencies in OMB Cir. No. A-34.

Congressional Funding for Fighting Forest Fires

Overall responsibility for the protection of public or national forests from destruction is vested in the Secretary of Agriculture.10/ The Forest Service is charged with the responsibility of assisting the Secretary in fighting

5/ 31 U.S.C. §§~~1512~~,~~1513~~ (1982).

6/ 31 U.S.C. §~~1517~~(a) (1982).

7/ 31 U.S.C. §~~1515~~(b)(1)(B) (1982).

8/ 31 U.S.C. §~~1516~~(1) (1982).

9/ 31 U.S.C. §§~~1351~~ and~~1517~~(b) (1982).

10/ 16 U.S.C. §~~551~~ (1982).

forest fires.^{11/} Funding for fighting forest fires is provided annually to the Forest Service in the National Forest System (NFS) account. It has long been the practice to initially provide only a relatively small amount to the Forest Service for fighting forest fires in annual appropriation acts and to provide additional funding in supplemental appropriations as actual needs and amounts become known.^{12/} At times, supplemental appropriations acts have provided the additional budget authority necessary to fund forest fire fighting operations prior to the expiration of the fiscal year during which the fires occur.^{13/} However, the recent trend of large fires fueled by drought conditions that occur late in the fiscal year has made timely enactment of supplemental appropriations acts prior to the end of the fiscal year virtually impossible. As a result, the Forest Service sometimes receives supplemental funding to liquidate obligations incurred late in one fiscal year in the appropriation act for the next fiscal year.^{14/}

^{11/} 16 U.S.C. §553 (1982).

^{12/} See, e.g., Department of Interior and Related Agencies Appropriations Act, 1979, Pub. L. No. 95-465, title II, 92 Stat. 1292 (1978), and the accompanying House and Senate Appropriation Committee Reports, H.R. Rep. No. 1251, 95th Cong., 2d Sess. 65 (1978) and S. Rep. No. 1063, 95th Cong., 2d Sess. 52 (1978), respectively. See also, Department of Interior and Related Agencies Appropriations for Fiscal Year 1979: Hearings Before a Subcommittee of the House Committee on Appropriations Part 2, 95th Cong., 2d Sess. 252 (1978) (United States Department of Agriculture Forest Service Budget Justifications, FY 1979).

^{13/} E.g., Supplemental Appropriations Act, 1979, Pub. L. No. 95-38, 92 Stat. 106 (1979) and the accompanying report of the House Committee on Appropriations, H.R. Rep. No. 227, 96th Cong., 1st Sess. 57 (1979).

^{14/} E.g., Department of Interior and Related Agencies Appropriations Act, 1988, enacted as part of the Joint Resolution making further continuing appropriations for the fiscal year 1988, Pub. L. No. 100-202, 101 Stat. 1329-235 (1987) and accompanying House and Senate Appropriations (continued...)

Advances for Fighting Forest Fires

In addition to the amounts appropriated for fighting forest fires to the NFS account, 16 U.S.C. § 556d (1982) permanently authorizes advances to the Forest Service for fighting forest fires in emergency cases from any appropriation available to the Forest Service. Section 556d also authorizes similar advances by the authority of the Secretary of Agriculture to the chiefs of field parties (individuals under contract to the Secretary for services related to administering national forests). While the history of this statutory provision does not expand on the legislative intent embodied in the law, its purpose is reasonably clear. It overcomes the requirement in 31 U.S.C. § 1301(a) (1982) that appropriations be applied only to objects for which the appropriation was made^{15/}, and the prohibition on advances in 31 U.S.C. § 3324(b) (1982)^{16/}, by making all Forest Service appropriation accounts available for expenditure (through advances) for fighting forest fires in emergency cases.

However, while section 556d authorizes advances from any appropriation account of the Forest Service for expenditure and obligation for the purpose of fighting forest fires in an emergency, it does not increase the budget authority Congress has appropriated for those accounts or affect the applicability of Antideficiency Act limitations to them. Therefore, the value of this provision to the Forest Service

14/ (...continued)

Committee reports, H.R. Rep. No. 171, 100th Cong., 1st Sess. 70 (1987) and S. Rep. No. 165, 100th Cong., 1st Sess. 80 (1987), respectively.

15/ See also 31 U.S.C. § 1532. In the absence of any express statutory prohibition, the Forest Service is authorized to reprogram funds within the lump sum NFS *Comp.* account to fight fires, see LTV Corp., 55 Gen. 307, 327-329 (1975). However, express statutory authorization is necessary to transfer funds between appropriation accounts.

16/ For a further discussion of the prohibition on advances, see GAO, Principles of Federal Appropriation Law at 4-25 through 4-32 (1982).

in avoiding Antideficiency Act problems in the NFS account depends on whether there are unobligated balances in other appropriation accounts which are not needed to fund the operations for which they were originally appropriated and which may be made available for fighting forest fires. Section ~~5~~556d appears to be of limited value in providing necessary obligation authority to fight forest fires to the extent major fires occur late in the fiscal year when the Forest Service has limited flexibility in diverting discretionary spending from other objects.

Finally, when funds are advanced from an appropriation account which is only available for obligation for a fixed period of time, then, should a supplemental appropriation authorizing repayment of this account be enacted after expiration of the advancing account's period of availability, the funds repaid to the expired account would not be available for incurring new obligations unless Congress provides otherwise. Instead, the funds would only be available for recording and liquidating obligations incurred prior to the expiration of the period of availability of the repaid account.17/

Thus, when reviewing the authority of the Forest Service and whether it has violated the provisions of the Antideficiency Act when financing fire fighting activities, we offer the following general guidance. For the purpose of fighting forest fires, the Forest Service may seek under 31 U.S.C. § ~~1~~515(b)(1)(B) an apportionment (or reapportionment) of the NFS account in a manner indicating the need for a supplemental appropriation since forest fires generally will constitute an emergency involving safety to human life or property. Any such apportionment should also be coupled with a request for a supplemental appropriation.

In the absence of the enactment of a supplemental appropriation request, 31 U.S.C. § ~~1~~342 as interpreted in previous GAO opinions authorizes the Forest Service to incur obligations to fight forest fires in excess of amounts available for obligating the NFS account without violating the Antideficiency Act. However, expending funds in excess of amounts available in the NFS account to liquidate the

17/ See 31 U.S.C. §§ ~~1~~502(a), 1551-1557 (1982) and GAO, Use of "M" Accounts and Related Merged Surplus Authority in the Department of Defense (AFMD-81-39, ~~B~~-201110, March 16, 1981).

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obligations would constitute a violation of the Antideficiency Act.

Further, under 16 U.S.C. §556d (1982), all appropriations for the Forest Service are available to fight forest fires and unobligated balances in these accounts may be applied to this purpose. However, once applied to the purpose of fighting forest fires, these balances are obligated and unavailable for the purpose for which initially appropriated. It appears from your memorandum that the Forest Service has in the past treated advances or transfers under 16 U.S.C. §556d as loans of budget authority to be repaid when the supplemental appropriation is enacted. While we have not addressed whether repayment was contemplated or required by this provision,^{18/} we do not find a basis to object to the practice since it apparently has received Congressional approval through appropriation acts making funds available for this purpose. However, the value of this procedure to the Forest Service is diminished to the extent any repayments are made to appropriations which have expired for obligating purposes since they would be unavailable to the Forest Service for the purpose of incurring new obligations.

TREATING SUPPLEMENTAL APPROPRIATION REQUESTS AS ANTICIPATED RECEIVABLES

Your memorandum states that the Forest Service needed to cover approximately \$250 million of total obligations incurred in fiscal year 1987 over appropriations realized. To rectify this, the Forest Service set up a \$250,211,065.05 anticipated receivable on September 30, 1987, that, in effect, represents anticipated income from a supplemental appropriation which has been requested but not enacted.^{19/}

^{18/} We currently have for our decision a question from the Forest Service on whether 16 U.S.C. §556d requires the repayment to accounts of amounts advanced or spent to fight forest fires.

^{19/} The Senate report accompanying the Department of Interior and Related Agencies Appropriations Act, 1989, Pub. L. No. 100-446, 101 Stat. 1774 (1988) indicates that only about \$150 million remains outstanding for the 1987 fiscal year. See S. Rep. No. 410, 100th Cong., 2d Sess. 73 (1988).
(continued...)

This was accomplished by recording this amount as a Budgetary Resource for the NFS account on the SF 133, line 3.A. "Reimbursements and other income: Earned."20/

Office of Management and Budget Circular No. A-34, revised August 26, 1985, Sec. 31.4, governs agency treatment of budgetary resources for the purpose of recording them on the SF 133. Section 31.4 provides that:

"The system of apportionment provided in this Circular permits inclusion of anticipated amounts of indefinite appropriations that do not require further Congressional action (but not anticipated additional appropriations not yet enacted), reimbursements and other income, and recoveries in determining the amounts available for apportionment even if these amounts are not available for obligation."

Supplemental appropriation requests clearly are not "indefinite appropriations that do not require further Congressional action" and are "anticipated additional appropriations not yet enacted" expressly excluded by the parenthetical clause in section 31.4.21/. Further, it would be inappropriate to circumvent this express exclusion by characterizing a supplemental appropriation request as either "reimbursements and other income" or "recoveries" because such a characterization would render the express limitation a nullity and mere surplusage. Even if we were

19/(...continued)

The reason for the discrepancy is unclear. However, as it does not affect our analysis of this issue, we did not attempt to reconcile the differences between these two amounts.

20/ Our response, therefore, relates only to the question whether a request for a supplemental appropriation constitutes an account receivable for fund control purposes and not whether it may be considered an account receivable for reporting on financial statements.

21/ See OMB Cir. No. A-34, § 53.1 explaining line entries on the SF 133. The explanation of entries on line 1B, "Appropriations anticipated (indefinite)" expressly excludes anticipated, unenacted supplemental appropriations.

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to view the parenthetical as not expressly excluding a supplemental appropriation request (and we do not), a supplemental request still does not qualify as "reimbursements and other income earned."

Section 31.4 provides that in the case of reimbursable work, budgetary resources available for obligation from reimbursements are comprised of earned reimbursements and unfilled customer orders. At any one time, the amount of budgetary resources available from reimbursements is calculated and includes orders from other Federal Government accounts that represent valid obligations of the ordering account whether or not accompanied by an advance from the ordering account to the performing accounts. The purpose of section 31.4 is to reflect interfund transactions involving one appropriation account funding work on a reimbursable basis pursuant to some legal authority (for example under the Economy Act, 31 U.S.C. §§ 1535, 1536) the cost of which ultimately will be borne by another appropriation account (that is the account of the ordering agency). Fundamental to this whole procedure is (1) the existence of available obligation authority in the ordering account against which to record the valid obligation, (2) an order for reimbursable work or services recorded as an obligation against that account, and (3) a performing account or fund which will receive the advance and against which payments for work or services will actually be charged. These transactions are recorded as an obligation on line 8 of the SF 133 of the ordering account when the order is placed and an outlay is reflected on line 14 when the payment is made. The receiving account records a change in unfilled customer orders on line 3B when an order is accepted and an earned reimbursement on line 3A when the service is provided.^{22/} These transactions serve to balance one another out since there is an increase in budgetary resources available for obligation in the performing account accompanied by a decrease in budgetary resources available for obligation in the ordering account by that amount. Clearly, requesting a supplemental appropriation has nothing to do with reimbursable work.

^{22/} See OMB Cir. No. ~~A~~^XA-34, § 53.1 explaining line entries on the SF 133; specifically, the note accompanying the explanation for entries on line 1D, "Net transfers (+ or -)."

On a related matter, not specifically raised by your question, we think that 16 U.S.C. §556d, does not contemplate reimbursable work orders. As indicated above, that provision merely permits the charging of costs for fighting forest fires against amounts otherwise available for obligation in any account of the Forest Service. It can be interpreted to authorize either direct obligation against these other accounts or to authorize the advance of unobligated balances in other accounts to the NFS account to be obligated and expended for fighting forest fires. (We think the latter approach is preferable since it results in all the costs incurred in fighting forest fires being collected as charges against one account.) Since advances of budget authority under authority of 16 U.S.C. §556d are without benefit to the transferring account but serve solely to benefit the receiving account, they are (with one exception) reported as nonexpenditure transactions on either line 1D or 2B of the SF 133, and not line 3 involving reimbursements and other income earned. See OMB No. A-34, § 81.3(c). The one exception (discussed in greater detail below regarding the treatment of the transfer from the K-V trust fund) requires treating advances of budget authority without benefit to the transferring account as expenditure transactions when the transactions involve transferring and receiving accounts in two different main fund groups. Only expenditure transactions are recorded on line 3 of the SF 133 as reimbursements and other income earned.

Finally, the supplemental appropriation request does not fall within the definition of the term "recoveries" as used in the OMB Cir. No. A-34.23/

Therefore, if obligations recorded against the NFS account exceeded the amount of budgetary resources otherwise available (that is, the amount available excluding the anticipated receivable representing the supplemental appropriation request), they should have been recorded as a deficiency in the NFS account. Whether this constitutes a violation of the Antideficiency Act would depend on whether the Forest Service obtained additional funds before liquidating these obligations.

23/ See OMB Cir. No. A-34, § 21.1 for a definition of the term "recoveries."

LIQUIDATING FISCAL YEAR 1986 OBLIGATIONS USING SUBSEQUENT FISCAL YEAR FUNDS

As indicated earlier in the background discussion, Congress has appropriated funds in one fiscal year to liquidate obligations incurred in fighting forest fires during prior fiscal years. This was the case involving the supplemental funding request for fiscal year 1986. The appropriation for the NFS account in the Department of Interior and Related Agencies Appropriations Act, 1987 24/ provides in pertinent part:

"For necessary expenses of the Forest Service, not otherwise provided for . . . and for repayment of advances made in the preceding fiscal year pursuant to 16 U.S.C. 556d for forest fire protection . . . \$1,158,294,000 of which \$263,323,000 for . . . fire fighting . . . shall remain available for obligation until September 30, 1988."

As your memorandum points out, the emphasized language was different from that used in prior and subsequent appropriation acts making funds available in the NFS account. In 1986 the relevant language in the account read "and for liquidation of obligations incurred in the preceding fiscal year for forest fire protection"25/ and in 1988 the relevant language read "for liquidation of obligations made in the preceding fiscal years pursuant to U.S.C. § 556d for forest fire fighting."26/ While the language varied from year to year, the purpose remained

24/ Set forth in the Joint Resolutions making continuing appropriations for the fiscal year 1987, Pub. L. No. 99-591, 100 Stat. 3341-268 (1986), Pub. L. No. 99-500, 100 Stat. 1782-268 (1986).

25/ Department of the Interior and Related Agencies Appropriations Act, 1986 set forth in the Joint Resolution making further continuing appropriations for the fiscal year 1986, Pub. L. No. 99-190, 99 Stat. 1245 (1985).

26/ Department of the Interior and Related Agencies Appropriations Act, 1988 set forth in the Joint Resolution making further continuing appropriations for the fiscal year 1988, Pub. L. No. 100-202, 101 Stat. 1329-235 (1987).

unchanged: to authorize the Forest Service to liquidate obligations for fighting forest fires in the preceding fiscal year or years in which the Forest Service had inadequate appropriations against which to obligate and liquidate these expenses and to repay any accounts charged with fighting forest fires.^{27/} Therefore, regardless of how the Forest Service chose to characterize these obligations or the manner it chose to reflect them for accounting and reporting purposes, the authority remains to use the funds appropriated in one fiscal year to liquidate the obligations incurred in the prior fiscal year or years if incurred to fight forest fires or to repay other accounts used to fight forest fires.

TRANSFER FROM K-V TRUST FUND TO FIGHT FOREST FIRES

It is our understanding that the K-V trust fund referred to in your memorandum is the fund established pursuant to the Act of June 9, 1930, ch. 416, § 3, 46 Stat. 527 (16 U.S.C.✓)

27/ The Senate Appropriations Committee Report accompanying the Department of Interior and Related Agencies Appropriations bill for fiscal year 1987 states with regard to the appropriation for the NFS account:

"Fighting forest fires.--The Committee recommends an appropriation of \$101,000,000, an increase of \$100,000,000 over the budget. This appropriation is to repay 1986 firefighting costs. If the 1986 costs do not reach the \$100,000,000 level, funds will be available to pay initial 1987 programs costs. . . ."
S. Rep. No. 397, 99th Cong., 2d Sess. 64-65 (1986).

The Conference Committee report indicates that it increased the amount provided for fighting forest fires by \$24,000,000. H.R. Rep. No. 1002, 99th Cong., 2d Sess. 50 (1986).

See also, Department of Interior and Related Agencies Appropriations for 1987: Hearings Before a Subcommittee of the House Committee on Appropriations, Part 2, 99th Cong., 2d Sess. 1452-11453 (1986) (U.S. Department of Agriculture 1987 Budget Explanatory Notes for Committee on Appropriations; Forest Service) explaining that the language change in the National Forest System account was a technical correction to conform to the statute authorizing advances.

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§ 576b), popularly referred to as the Knutson-Vandenberg Act. The law authorizes the Secretary of Agriculture when in the public interest to require purchasers of national-forest timber to make payments (in addition to payments for timber) to cover the government's cost of (1) planting trees, (2) sowing seed, (3) cutting, destroying or otherwise removing undesirable trees, and (4) protecting and improving the future productivity of the renewable resources of the forest land. These payments are deposited into a special fund in the Treasury which is appropriated and made available without fiscal year limitation for the above stated purposes as the Secretary may direct. If the Secretary determines that any portion of the deposits are found to be in excess of the amounts needed to perform the authorized work, he is required to transfer it to miscellaneous receipts, forest reserve fund, as a national forest receipt for the fiscal year in which such transfer is made.

The K-V trust fund (actually called a special fund in the law) is available at the direction of the Secretary of Agriculture to fund authorized activities carried out through the Forest Service. The language establishing the K-V trust fund constitutes an appropriation of the payment receipts for use under the direction of the Secretary of Agriculture.^{28/} Under these circumstances, the K-V trust fund is an appropriation from which advances may be made to the Forest Service under 16 U.S.C. § 556d for fighting forest fires.

TREATMENT OF TRANSFER FROM K-V TRUST FUND AS EXPENDITURE TRANSACTION

We surmise from the information set forth in your memorandum that funds were transferred during fiscal year 1986 from the K-V trust fund to the NFS account and used for the purpose of fighting forest fires. Further, it appears that the

^{28/} Appropriations are defined in 31 U.S.C. §§ 701(2)(c) and 1101(2)(c) as including "other authority making amounts available for obligation or expenditure." Where the Congress has authorized the use of funds collected by an agency, the authorization constitutes an appropriation. See Washington National Limited Partnership, 65 Comp. Gen. 25 (1985); Federal Prison Industries, Inc., 60 Comp. Gen. 323 (1981); St. Lawrence Seaway Development Corp., B-193573, December 19, 1979.

transfer was made via the SF 1081 (voucher for external payments) and recorded as an accounts payable (presumably in the NFS account). Thus the transfer from the K-V trust fund was considered payable because the Forest Service intended to repay the K-V trust fund at some future date the amount transferred. The Forest Service apparently felt it was obligated to repay the account because of its "trust account" status. You question the treatment of this transfer as an expenditure transaction.

Volume I of the Treasury Financial Manual (TFM) Chapter 2000 provides prescribes forms and procedures to be observed by agencies in recording nonexpenditure transactions. In I TFM 2-2060.20 - Types of nonexpenditure Transfer, it states that:

"Nonexpenditure transfers are limited to transactions in which both the withdrawal and credit are to (1) accounts within the budget, with the exception of trust funds, i.e., general, revolving, management, and special accounts; (2) trust fund accounts; or (3) accounts outside the budget, i.e., deposit fund accounts. A withdrawal and credit transaction between accounts in different groups will be classified as an expenditure transaction without exception."

As we noted earlier, the fund established under section 3 of the Knutson-Vandenberg Act is classified as a trust fund account by the Treasury. Additionally, the NFS account is a two-year account. Thus under Treasury direction set forth in I TFM 2-2060.20, the Forest Service is required to treat the transfer of funds from the K-V trust fund to the National Forest System account as an expenditure

transaction.^{29/} See also OMB Cir. No. XA-34, §§ 81.2(a)(3), 81.3.

Furthermore, there is nothing improper in the Forest Service treating the transfer of funds from the K-V trust fund to the NFS account as a temporary advance and requesting appropriations in the future to repay the K-V trust fund since this is consistent with the concept of applying receipts in the K-V account towards the purpose for which initially received from the public. While the funds may not have been needed for K-V trust purposes at the time of the transfer, they may be needed in the future for K-V trust purposes. Under the law, whether any funds are to be transferred to the miscellaneous receipts, forest reserve fund, is for the determination of the Secretary of Agriculture and we have no basis to question the exercise of his discretion in this matter. Furthermore, since the Congress has provided for the repayment of accounts from which funds were advanced to fight forest fires and has not limited which accounts may be repaid, we have no basis to object to the practice.

PAYMENTS TO STATES PRIOR TO FUNDS TRANSFER

As you indicated in your memorandum, 25 percent of all monies received from national forests during the fiscal year is paid to the states in which the forests are located to benefit public schools and public roads in the county or counties with the national forests.^{30/} In lieu of the 25

^{29/} While the K-V trust fund also constitutes an "appropriation" for the purpose of 16 U.S.C. § 556d, it is not improper for Treasury to treat the account in a different manner for budget reporting and accounting purposes. We think the concept of appropriations for the purpose of 16 U.S.C. § 556d is very broad and encompasses any resource technically qualifying as an appropriation in order to meet firefighting emergencies. On the other hand, the concept of appropriations and trust funds may be distinct and narrowly defined for budget reporting and accounting purposes. See also 31 U.S.C. § 1321(a)(13), classifying the Forest Service Cooperative Work Fund as a trust fund for the purposes of that provision which serves to appropriate the funds in the account for the purpose authorized.

^{30/} 16 U.S.C. § 500 (1982).

percent payment, the State of Minnesota receives 0.75 percent of the appraised value of certain public lands in the counties of Cook, Lake, and St. Louis, for distribution to these counties.^{31/} These payments are required to be made at the close of each fiscal year.

National forest receipts are deposited to the National Forest Fund 12x5008 account (NFF) and then transferred to payment account 12x5201 for the 25 percent payments to the states and payment account 12x5213 for the 0.75 percent payments to Minnesota. On December 31, 1987, the Forest Service made an \$81,764,602.22 payment to the states from the 12x5201 account and a \$179,037.16 payment to Minnesota from the 12x5213 account before any money had been transferred to these accounts from the National Forest Fund account.

Insufficient funds in the payment accounts to cover the payments to the states does not present a violation of 31 U.S.C. § 1341 unless on the payment date, adequate funds were not available for obligation and expenditure in the NFF receipt account to cover these payments. If sufficient funds were available in the NFF receipt account and there was merely a delay in processing the paperwork to effect the transfer from the receipt account to the payment account, then there has been no violation of 31 U.S.C. § 1341 since, in effect, there was no obligation or expenditure in excess of the funds available. However, if there were insufficient funds available for obligation and expenditure in the NFF receipt account to cover all payments attributable to the NFF on that date, then a violation occurred. Even if an Antideficiency Act violation occurs under the latter scenario, the impact of such violation was mitigated by the subsequent deposit in and transfer from the NFF account of sufficient funds to cover the payments.

^{31/} 16 U.S.C. § 577g (1982).

END