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DECISION

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

FILE: B-215251; B-215294 **DATE:** September 10, 1984

MATTER OF: Robinson Engineering, Inc. and John B. Guyton

DIGEST:

The Forest Service's prohibition of the use of tracer ammunition as a technique in surveying the property boundaries of National Forests in the State of California is reasonable where state law forbids the use of tracer ammunition and the technique poses a potential fire hazard.

Robinson Engineering, Inc. and John B. Guyton, surveyors, protest the action of the Forest Service, U.S. Department of Agriculture, prohibiting the use of the Magnesium Tracer Range Pole (MTRP) technique in current and future offers to perform property boundary surveys of National Forests in Forest Service Region 5 (California). Both the Forest Service and the State of California regard the MTRP technique as a fire hazard because it employs tracer ammunition. Robinson and Guyton complain that the Forest Service has allowed its use before in Region 5 and therefore should do so now; that California law cannot be applied to restrict contracts performed on federal lands; and assert that because the MTRP technique is a more accurate, efficient and cost-effective surveying method, it is an abuse of discretion for the Forest Service to take this course of action. We deny the protest.

A tracer bullet, made of magnesium or other incendiary components, leaves a trail of light as it passes through the air. The MTRP technique fires a tracer bullet vertically into the air, and from a point somewhat distant, a surveyor sights in on the trail of light and determines an angle and distance between the two points. This technique is regarded by the protesters as a more accurate surveying method, and as being much more efficient, especially in rugged and wooded terrain. Further, because of savings in time and

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labor, the protesters assert that it is more cost-effective. However, because the use of tracer ammunition poses a fire hazard in the dry forested areas that exist in California, and because of applicable state law addressing that concern, the Forest Service in Region 5 will not accept surveying proposals which employ the MTRP technique. We find nothing unreasonable in the Forest Service's action in this matter.

Both Forest Service regulation and California state law prohibit the use of tracer ammunition in forested areas. 36 C.F.R. § 261.5(b) (1984) provides that no kind of "tracer bullet or incendiary ammunition" may be fired in the National Forest System.[1] Cal. Public Resources Code § 4445 (Deering 1976) states, in part, that:

> "A person shall not fire or cause to be fired . . . any bullet, projectile, or other ammunition which contains the components of thermite, magnesium, or aluminum . . . commonly known as tracer or incendiary ammunition within any forest - covered area . . . ."

Despite any allowance of the MTRP technique in the past in Region 5, the Forest Service states that it agrees with California that the technique poses a fire hazard and, accordingly, chooses to recognize and be bound by section 4445. According to the Forest Service, one of the prime considerations is that boundary surveys

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[1]It is not clear whether the Forest Service would waive or otherwise suspend the operation of this subsection in order to permit surveys using the MTRP technique in National Forests in other regions where, because of climate or weather conditions, there is little fire danger, and where there is no prohibitive state law. This subsection (in effect since 1977) was not followed in 1980 in Region 5 when the Forest Service allowed an MTRP survey to be conducted in the Sequoia National Forest (a decision now essentially repudiated); however, section 261.1a of the same title does authorize Forest Service officers to issue conditional permits for otherwise prohibited acts, apparently what was done in 1980.

in National Forests often necessitate entrance onto adjoining state or private lands. Therefore, even if the Forest Service were to issue a permit under section 261.1a, supra, to allow the use of the MTRP technique in a Region 5 National Forest, the possibility of violating California law with respect to adjoining non-federal lands would still readily exist.

Our Office will not question an agency's decision concerning its best method of accommodating its minimum needs absent a clear showing that the decision is arbitrary or otherwise unreasonable. See, e.g., Duroyd Manufacturing Company, B-213046, Dec. 27, 1983, 84-1 CPD ¶ 28. In our opinion, no such showing has been made here. It is our view that the Forest Service is justified in prohibiting the MTRP technique in Region 5, where the possibility of fire outweighs any restriction in the surveying method that may have been imposed upon the protesters. In that regard, as we believe the Forest Service correctly points out, this action has not prevented the protesters from competing, but rather requires them to propose the use of an alternative surveying method.

The protests are denied.

Milton J. Socolar

for Comptroller General
of the United States