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Forest Service Accountability in Administering Its Trust Funds

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Summary

The USDA Forest Service has numerous permanently appropriated trust funds and special funds that provide substantial funding independent of the annual appropriations process. Critics have alleged abuse of the funds and have sought greater congressional oversight, and the General Accounting Office has testified on the agency's management of some of these accounts. While the Administration has offered few responses to the criticisms of these funds, it has, in its FY2001 budget request, proposed creating two new trust funds and combining several existing funds into a new fund with expanded purposes. This report provides an overview of the permanently appropriated Forest Service accounts and concerns over their use and proposed alternative structures that could provide greater public and congressional oversight and control over permanently appropriated funds. This report will be updated if events warrant.

Overview and Concerns

The Forest Service has 18 permanently appropriated accounts, providing substantial funding for agency programs (22% in FY1998) independent of annual appropriations.¹ Nine accounts had more than \$25 million in budget authority in FY2000, for a total of \$628 million. In descending order of FY2000 budget authority, the nine accounts are:

- the Timber Salvage Sale Fund, to recover from timber purchasers the cost of preparing salvage sales (including necessary roads) and administering harvests: \$127.9 million in FY2000;
- the Knutson-Vandenberg (K-V) Fund, originally to collect funds from timber purchasers funds to reforest and improve timber stands, and since 1976, also to mitigate and enhance other resources in timber sale areas: \$115.6 million in FY2000;

¹ For more information on permanent appropriations generally, a description of the Forest Service accounts, and a comparison of the Forest Service accounts with those of the Department of the Interior's land management agencies, see CRS Report RL30335, *Federal Land Management Agencies' Permanently Appropriated Accounts*.

- the “Spotted Owl” Payments, to compensate counties for FY1994–FY2003 for the tax-exempt national forest lands that contain northern spotted owl habitat: \$114.5 million in FY2000;
- the (25%) Payments to States, to compensate counties for tax-exempt national forests by sharing 25% of receipts: \$113.1 million in FY2000;
- other cooperative work, to collect from timber purchasers funds for road work after timber harvesting is completed: \$50.0 million in FY2000;
- the Reforestation Trust Fund, originally to eliminate the reforestation backlog, and since 1985 to supplement appropriations for reforestation and timber stand improvement: \$30.0 million in FY2000;
- the National Forest Roads and Trails (10%) Fund, originally to supplement appropriations for road construction, and since 1999, also to supplement appropriations for forest health improvement: \$26.0 million in FY2000;
- the Brush Disposal (BD) Fund, to collect from timber purchasers funds to reduce the hazards from the limbs and tops left following timber harvests: \$25.9 million in FY2000; and
- the Recreation Fee Demonstration Program, to collect from recreation users funds to maintain and restore recreation facilities and sites: \$25.0 million in FY2000.

These accounts have two major purposes, as described above: to compensate local governments for the tax-exempt status of the national forests, and to fund various specific agency activities within the national forests. The 25% Payments to States have been criticized as providing insufficient and/or inappropriate compensation, and legislation to alter this program has been introduced and has passed the House.²

In contrast to the compensation accounts, the permanent funds for agency activities have been widely criticized both for alleged misuse of the funds and for the agency’s poor accounting of their performance. In the past three years, the General Accounting Office (GAO) has testified several times and issued numerous critical reports on these issues:

- GAO/RCED-96-15 (June 1996), *Forest Service’s Reforestation Funding: Financial Sources, Uses, and Condition of the Knutson-Vandenberg Fund*;
- GAO/RCED-96-240R (B-274114, Aug. 22, 1996), *Salvage Sale Fund’s Deposits and Outlays*;
- GAO/RCED-97-216 (Aug. 1997), *Forest Service: Unauthorized Use of the National Forest Fund*;
- GAO/RCED-97-228 (Sept. 1997), *Forest Service: Actions Needed to Ensure That Salvage Sale Fund Is Adequately Managed*;
- GAO/T-RCED-98-214 (June 4, 1998 testimony), *Forest Service: Indirect Expenditures Charged to Five Funds*;
- GAO/T-RCED-98-240 (July 7, 1998 testimony), *Forest Service: Agency’s Response to Our Recommendations of the Knutson-Vandenberg Fund*; and

² For more information, see CRS Report RS20178, *Forest Service Receipt-Sharing Payments: Proposals for Change*.

- GAO/RCED-98-258 (Aug. 1998), *Forest Service: Better Procedures and Oversight Needed to Address Indirect Expenditures*.

Others have also criticized Forest Service accounting for its performance and its use of the permanently appropriated accounts. Congress's Office of Technology Assessment produced two reports in the early 1990s assessing Forest Service performance: OTA-F-441, *Forest Service Planning: Setting Strategic Direction Under RPA*; and OTA-F-505, *Forest Service Planning: Accommodating Uses, Producing Outputs, and Sustaining Ecosystems*. Analysis of Forest Service timber financial practices led Randal O'Toole to write *Reforming the Forest Service* (Washington, DC: Island Press, 1988) and then to cooperate with an array of interests — environmentalists, industry, and others — to develop the alternative financing and governance ideas presented in *2nd Century: Options for the Forest Service*. In August 1999, the National Academy of Public Administration presented recommendations on Forest Service fiscal management and accounting in *Restoring Managerial Accountability to the United States Forest Service*. The agency has argued that the accounts are necessary tools for effective resource management, although better fiscal accounting and management are needed.³

In its FY2001 budget, the Administration announced its intent to offer legislation to create three new permanent accounts, one of which addresses the concerns cited above:

- the Healthy Investments in Rural Environments (HIRE) Fund, to “reform the Forest Service’s trust fund system” to reduce the backlog of road and recreation maintenance and reconstruction, fire suppression, and forest health projects, while funding “work currently performed under the trust funds” using a “baseline” of funds from the Treasury;
- the Land Acquisition Reinvestment Fund, to acquire environmentally valuable lands using funds from increased authority for land sales; and
- the Facilities Acquisition and Enhancement Fund, to build new facilities and acquire environmentally sensitive lands from new authority to sell “facilities, buildings, constructed features, and land in excess of ...” the agency’s needs.

Situations That Have Led to the Concerns

The existing permanently appropriated accounts were created for specific purposes. The K-V Fund, for example, was established to assure adequate funding for reforestation and other needed work on timber sale areas following timber harvests; it was expanded in 1976 to allow timber receipts to be used to mitigate damages to resource values in timber sale areas. The Salvage Sale Fund was established to assure recovery of the direct costs from low-value salvage sales. Deposits for other cooperative work were authorized to ensure that cooperators (*e.g.*, timber purchasers) funded the necessary subsequent agency activities (*e.g.*, road maintenance needed because of logging truck traffic). Such reasoning underlies most, if not all, of the permanent accounts.

³ Ronald E. Stewart, Deputy Chief, USDA Forest Service, “Testimony,” *Fiscal Accountability in the U.S. Forest Service*, Hearings before the House Agriculture Committee on June 4, 1998 (Washington, DC: U.S. Govt. Print. Off., 1998), Serial No. 105-53, pp. 7-9.

One issue concerns the use of permanent accounts to fund activities beyond the intent of the original authorizing legislation. The K-V Fund, for example, is no longer restricted to funding reforestation of the timber sale area from which the funds were collected. Instead, they can now be used on any sale area in the national forest where they were collected, and “sale areas” (the entire area within the boundaries of the sale, not just the area where trees are cut) have been expanding to allow broader use of K-V Funds. In addition, the 1976 amendment allowed K-V funds to be used to enhance resource values, not just to reforest timber sale areas. In 1999, the Administration proposed allowing the use of deposits to the K-V Fund (and other accounts) anywhere in the National Forest System to reduce hazardous fuel loadings. These several changes (including amendments to the original authorization as well as the implementing rules) reduce accountability for achieving the performance originally intended by Congress when it established the K-V Fund in 1930, because they establish multiple, competing purposes, with Forest Service discretion to allocate funds among those purposes, and virtually no limit on the level of the deposits (up to the total amount of money received from the timber sale).

Critics have expressed concerns about funds with multiple authorized purposes when one activity generates the receipts, notably the K-V Fund. This Fund receives a portion of the revenues from most timber sales, which can then be allocated to timber purposes (*e.g.*, reforestation) and/or other purposes (*e.g.*, watershed improvement). Critics assert that some managers might support a damaging activity (*e.g.*, a timber sale), because it generates local funds for other desired activities (*e.g.*, wildlife habitat improvement). Others argue that mitigating damages or improving site conditions is an appropriate use of the timber receipts.

Another situation is the disposition of “excess” collections — where the deposits are more than was actually needed to perform the authorized task. Several accounts — including the K-V Fund, the Salvage Fund, other cooperative work, and the BD Fund — specify that any excess collections are to be transferred to the General Treasury. The managers have no incentive to identify excess collections, since the money is effectively “lost” to the Treasury, and cannot be used by the agency. There have been numerous charges of misuse, but until recently, congressional oversight has been limited.

Some of the authorities for the existing permanent accounts attempt to provide quite specific directions for the use of the funds. The Salvage Sale Fund, for example, was created in §14(h) of the National Forest Management Act of 1976 “to cover the cost to the United States for design, engineering, and supervision of the construction of needed roads and the cost for Forest Service sale preparation and supervision of the harvesting of such timber.” Other uses of the Salvage Sale Fund are apparently not authorized. Similarly, the act establishing the BD Fund states: “Purchasers of national forest timber may be required ... to deposit the estimated cost to the United States of disposing of brush and other debris resulting from their cutting operations” However, even accounts with narrowly written laws have been criticized as being used for unauthorized purposes. For example, GAO reported that 27% of FY1997 expenditures from five accounts (ranging from 9–34%, and including the Salvage Sale and BD Funds) were used for overhead costs.

This prompted widespread criticism from Members and legislation (H.R. 4149 of the 105th Congress) to restrict such use, which had been endorsed by GAO in 1947 as appropriate.⁴

Structures to Achieve the Intended Results

Various proposals have been offered to restructure the permanently appropriated accounts to increase the likelihood that they fulfill congressional intent efficiently. One option that has been suggested would be to eliminate the accounts (*i.e.*, to require annual appropriations for all agency activities) or at least to require annual approval for spending any of the deposits in a special account (probably in the appropriations bill). Both would increase congressional control over expenditures for various purposes, and the latter might also increase congressional oversight of revenues and deposits. However, some argue that this is a difficult choice, between hoping that Congress will fund the desirable programs (in annual appropriations) and trusting the agency's discretion to fund desirable programs (from the permanent trust funds). Some critics have suggested that Congress has not provided balanced funding to achieve the desired outputs from and desired conditions in the national forests.⁵

Another structure for achieving specific purposes on specific sites would be for the statute that authorizes deposits to a permanent account to narrowly specify the level of deposits, the activities and sites on which they could be used, and the amount of overhead costs which could be paid. That would probably be most efficient and effective if there were a cause-and-effect relationship between the sources and uses of the funds, such as using harvest receipts to pay for reforestation needed because of the timber harvest.

That second structure would require some means to minimize "excess" collections. Some have suggested that an external organization oversee the collections and determine when collections are excessive. A simpler suggested approach might be to require that collections not used for the authorized purposes on the appropriate sites be returned to the depositor. That approach could work effectively for deposits by timber purchasers — for the K-V Fund, Salvage Sale Fund, BD Fund, and some other cooperative work. Timber purchasers would have an interest in assuring that the Forest Service minimized the funds used, since any unused funds would be returned. It might also encourage purchasers to alter their timber harvesting operations to reduce the subsequent site preparation and reforestation expenses. Devising sufficiently clear statutory language for a contractual arrangement and to prevent litigation on each timber sale could be difficult. That might also require relatively precise accounting for receipts and expenditures for each timber sale

⁴ In 1947, responding to a request from the Secretary of Agriculture to allow use of K-V Funds to pay administrative costs, the Comptroller General of the United States wrote: "In view of the matters outlined above ... there would appear to be a reasonable basis for the view that the [K-V] fund established under the act of June 9, 1930, ... properly may be charged with a part of the cost of the services referred to [indirect costs], and no objection to such practice will be interposed by this office." B-67619, Dec. 3, 1947. GAO thus determined that some indirect costs could properly be paid from deposits to the K-V Fund. Comparable letters may exist for other Forest Service accounts, although none has been identified.

⁵ See Randal O'Toole, *Reforming the Forest Service* (Washington, DC: Island Press, 1988); and Paul W. Hirt, *A Conspiracy of Optimism: Management of the National Forests Since World War Two* (Lincoln, NB: Univ. of Nebraska Press, 1994).

which provided deposits to the special account. On the other hand, simplification might also be feasible, for example, if site preparation (from the BD Fund) were combined with reforestation (from the K-V Fund). That approach would benefit from very close linkage — both geographically and causally — between the sources and uses of the funds, with limits on the allowable use of the funds and external or independent oversight of those uses.

For some of the existing funds — notably, the Reforestation Trust Fund, the 10% Roads and Trails Fund, the Recreation Fee Demonstration Program, and the resource enhancement and stand improvement activities of the K-V Fund — the conceptual link between the activities that generate the funds and those on which the funds are used is obscure, and developing a connection that would be transparent might be difficult. An alternative approach, suggested by Randal O’Toole and others in *2nd Century: Options for the Forest Service*, would be to deposit a fixed share of receipts (e.g., 10%) to a special fund. Such funds could then be used on specified activities and allocated to address identified priorities, with oversight by an advisory group to assure that the priorities and funded activities fulfill the intent of the program.⁶ That would not establish close geographic and causal links, but it would fund specific activities and focus on priority needs, with oversight by interested parties (although the financial stake of depositors who were refunded “excess” collections would be missing).

Conclusion

Critics have alleged that the Forest Service’s permanently appropriated trust funds have been abused — funding unauthorized activities and providing inappropriate incentives for agency managers. Such alleged abuse could result from the structure of the specific funds, but could also result from inadequate oversight. Minimal oversight, in turn, could at least partly result from non-transparent financial management practices and other inadequate performance-accountability measurement and reporting.

Various options have been suggested to address the concerns, including:

- terminate the funds and require annual appropriations for all activities;
- require annual appropriations to spend money from the funds;
- authorize and test new governance and funding structures (although this generally addresses the entire agency, not just the permanent funds);
- establish direct cause-and-effect linkages between fund sources and uses, with independent oversight to assure performance and prevent excess collections; and
- centralize collections and allocate funds to achieve priority needs, with independent oversight.

However, any changes in the permanent trust funds and special funds would require legislation which would likely be controversial, because of the numerous local, state, and national interests involved.

⁶ The Migratory Bird Conservation Commission (16 U.S.C. 715a) might be a useful analogy. This Commission, composed of three Administration officials and four Members of Congress, is authorized to review U.S. Fish and Wildlife Service recommendations for land purchases using the permanently-appropriated Migratory Bird Conservation Fund.

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