Text as published on gao.gov, https://www.gao.gov/products/b-163089, archived 2026-07-10. GAO published no original file for this decision. Rendered by Comptroller Desk.

B-163089, Feb. 8, 1968

Number: B-163089

Date: 1968-02-08

B-163089, FEB. 8, 1968

STATES - FEDERAL ENCLAVES, ETC. - FIRE PROTECTION DECISION TO SECY. OF ARMY AS TO THE PROPRIETY OF THE CORPS OF ENGINEERS ENTERING INTO A CONTRACT WITH THE STATE OF IDAHO AND THE CLEARWATER- POTLATCH TIMBER PROTECTIVE ASSOCIATION FOR FIRE PROTECTION OF FOREST LANDS. WHERE NEITHER A STATE (IDAHO) UNDER STATE LAW NOR A NONGOVERNMENTAL VOLUNTARY ORGANIZATION UNDER AGREEMENT WITH THE STATE IS RESPONSIBLE FOR OR UNDER A MANDATORY DUTY TO PROTECT FOREST LAND UNDER FEDERAL OWNERSHIP AN AGREEMENT FOR FIRE PROTECTION BETWEEN THE CORPS OF ENGINEERS AND THE STATE AND VOLUNTARY FIRE PROTECTION ORGANIZATION WILL NOT BE QUESTIONED ON THE BASIS OF THE FEDERAL GOVERNMENT'S ENTITLEMENT TO FIRE PROTECTION IN THE ABSENCE OF A JUDICIAL DETERMINATION TO THE CONTRARY.

TO MR. SECRETARY:

IN A LETTER OF DECEMBER 4, 1967, ENGGC-C, THE GENERAL COUNSEL, OFFICE OF THE CHIEF OF ENGINEERS, DEPARTMENT OF THE ARMY, REQUESTED OUR DECISION ON WHETHER THE CORPS OF ENGINEERS MAY ENTER INTO A PROPOSED CONTRACT WITH THE STATE OF IDAHO AND THE CLEARWATER-POTLATCH TIMBER PROTECTIVE ASSOCIATION FOR THE FIRE PROTECTION OF FOREST LANDS ACQUIRED IN IDAHO.

FOR THE DWORSHAK DAM AND RESERVOIR IN THE STATE OF IDAHO, A PROJECT AUTHORIZED BY THE FLOOD CONTROL ACT OF 1962 (76 STAT. 1193), A PROPRIETORIAL INTEREST IN APPROXIMATELY 25,000 ACRES OF FOREST LANDS WAS ACQUIRED. ABOUT 2,000 ACRES ARE LOCATED WITHIN THE KENDRICK FIRE PROTECTION DISTRICT AND THE REMAINING LANDS ARE LOCATED WITHIN THE CLEARWATER AND POTLATCH FOREST PROTECTIVE DISTRICTS. AS THE UTILIZATION OF LOCALLY AVAILABLE FOREST FIRE PROTECTION, PROVIDED BY THE STATE OF IDAHO AND THE CLEARWATER-POTLATCH TIMBER PROTECTIVE ASSOCIATION, IS MORE ECONOMICAL THAN THE ALTERNATIVE OF ESTABLISHING A PROJECT FIRE PROTECTION SYSTEM, IT IS PROPOSED TO CONTRACT FOR SUCH PROTECTION WITH THE STATE AND THE ASSOCIATION. THE LETTER OF THE GENERAL COUNSEL EXPLAINS THAT THE KENDRICK FIRE PROTECTION DISTRICT IS AN ADMINISTRATIVE PROTECTIVE DISTRICT OF THE STATE, ESTABLISHED BY THE STATE FORESTER UNDER THE AUTHORITY OF THE IDAHO FORESTRY ACT, TITLE 38, CHAPTER 1, IDAHO CODE; AND THAT THE ASSOCIATION, A NONGOVERNMENTAL VOLUNTARY ORGANIZATION OF FOREST LAND OWNERS ORGANIZED FOR THEIR MUTUAL FIRE PROTECTION, HAS ENTERED INTO AGREEMENTS WITH THE STATE TO FURNISH FIRE PROTECTION WITHIN THE BOUNDARIES OF THE CLEARWATER AND POTLATCHFOREST PROTECTIVE DISTRICTS. UNDER THE PROPOSED CONTRACT, THE CORPS OF ENGINEERS WOULD REIMBURSE THE STATE AND THE ASSOCIATION FOR THE FIRE PROTECTION OF THE PROJECT LANDS ON THE SAME COST BASIS USED IN THE ANNUAL ASSESSMENT OF OTHER OWNERS OF PROTECTED LANDS.

THE SUBMISSION INVOLVES THE QUESTION OF WHETHER THE GOVERNMENT IS OTHERWISE

ENTITLED TO FIRE PROTECTION OF ITS FOREST LANDS FROM THE STATE OF IDAHO AND THE ASSOCIATION SO AS TO PRECLUDE THE USE OF APPROPRIATED FUNDS FOR THE PROCUREMENT OF SUCH SERVICES. SEE 26 COMP. GEN. 382, 35 ID. 311 AND 45 ID. 1.

ALTHOUGH FIRE PROTECTION IS WELL ESTABLISHED AS A GOVERNMENTAL FUNCTION, THE ATTORNEY GENERAL OF THE STATE OF IDAHO, IN A LETTER OF SEPTEMBER 11, 1967, TO THE STATE FORESTER AND THE SECRETARY-TREASURER OF THE ASSOCIATION EXPRESSED THE OPINION THAT "NEITHER THE STATE OR THE ASSOCIATION UNDER ITS AGREEMENTS WITH THE STATE, IS RESPONSIBLE FOR OR UNDER A MANDATORY DUTY TO PROTECT FOREST LAND IN FEDERAL OWNERSHIP EVEN THOUGH THAT LAND MAY BE WITHIN A FOREST PROTECTIVE DISTRICT.' AND HE WENT ON TO STATE THAT "WHERE PROTECTION IS FURNISHED FEDERAL LAND BY THE STATE IT SHOULD BE DONE BY AGREEMENT OF THE FEDERAL AGENCY AND THE STATE AS PROVIDED BY IDAHO CODE, SECTION 38 134 (1947).'

THE POSITION OF THE ATTORNEY GENERAL OF IDAHO IS PREDICATED UPON THE IDAHO FORESTRY ACT, PARTICULARLY SECTION 38-107, WHICH STATES THAT EVERY OWNER OF FOREST LANDS IN THE STATE SHALL FURNISH OR PROVIDE THROUGHOUT THE CLOSED SEASON (MAY 10 TO OCTOBER 20, INCLUSIVE), PROTECTION AGAINST THE STARTING, EXISTENCE OR SPREAD OF FIRES THEREON, AND IN THE EVENT THE OWNER NEGLECTS OR FAILS TO FURNISH THE REQUIRED PROTECTION, THE STATE FORESTER SHALL PROVIDE PROTECTION AT ACTUAL COST. THE ATTORNEY GENERAL ALSO POINTS OUT THAT THE IDAHO FORESTRY ACT SPECIFICALLY AUTHORIZED THE STATE FORESTER TO ENTER INTO AGREEMENTS WITH THE FEDERAL GOVERNMENT FOR THE PURPOSE OF PROVIDING FIRE PROTECTION (SECTION 38-134) AND THAT THE STATE UNDER THE PROVISIONS OF THE FORESTRY ACT IS CONSIDERED AN "OWNER" AND IS REQUIRED TO BEAR ITS SHARE OF THE COSTS FOR FIRE PROTECTION FURNISHED IN EACH PROTECTIVE DISTRICT IN WHICH IT OWNS FORESTED LAND (SECTION 38-121).

IN VIEW OF THE ATTORNEY GENERAL'S CONCLUSION THAT NEITHER THE STATE, UNDER THE APPLICABLE STATE LAW, NOR THE ASSOCIATION UNDER ITS AGREEMENTS WITH THE STATE, IS RESPONSIBLE FOR OR UNDER A MANDATORY DUTY TO PROTECT FOREST LAND IN FEDERAL OWNERSHIP EVEN THOUGH THE LAND IS WITHIN A FOREST PROTECTIVE DISTRICT, YOU ARE ADVISED THAT IN THE ABSENCE OF A JUDICIAL DETERMINATION TO THE CONTRARY, WE SHALL NOT OBJECT TO OR QUESTION THE LEGALITY OF THE PROPOSED CONTRACT ON THE BASIS OF THE ENTITLEMENT OF THE GOVERNMENT TO THE FIRE PROTECTION SERVICES CONTRACTED FOR.

THE ENCLOSURES WITH THE LETTER OF THE GENERAL COUNSEL OF THE CORPS OF ENGINEERS ARE RETURNED PURSUANT TO HIS REQUEST.