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September 10, 2004

The Honorable Richard W. Pombo
Chairman
Committee on Resources
U.S. House of Representatives

The Honorable Greg Walden
Chairman
Committee on Resources
Subcommittee on Forests and Forest Health
U.S. House of Representatives

Subject: *Forest Service—Sierra Nevada Forest Plan Amendment brochure and video materials*

This responds to your request for our legal opinion regarding the Forest Service's use of appropriated funds to produce and distribute a brochure entitled "Forests With a Future: Protecting Old Growth Trees, Wildlife and Communities in Sierra Nevada." Specifically, you asked whether the use of appropriated funds for the brochure constitutes a violation of the prohibition on using funds for publicity or propaganda purposes enacted in the Consolidated Appropriations Act of 2004, Pub. L. No. 108-199, Div. F., Tit. VI, § 624, 118 Stat. 3, 356 (2004). You also asked whether the Forest Service's contract with a private company, OneWorld Communications, Inc. (OneWorld), to assist with the production and distribution of the brochure violated 5 U.S.C. § 3107, which prohibits the use of appropriated funds to pay a publicity expert without authorization from Congress.

To respond to your request, we wrote to the Department of Agriculture (USDA) requesting factual information and its legal justification for its use of appropriations to produce and distribute the brochure. Letter from Susan A. Poling, Managing Associate General Counsel, GAO, to Nancy S. Bryson, General Counsel, USDA, May 11, 2004. In response to our letter, we received a copy of a legal memorandum written by Ms. Bryson to Mark E. Rey, Under Secretary, Natural Resources and Environment, USDA, Apr. 23, 2004 (Bryson Memo). This memorandum explained USDA's legal justification as to why the brochure at issue here did not violate the publicity or propaganda prohibition and other anti-lobbying prohibitions of the

annual appropriations act.[1] Letter from Nancy S. Bryson, USDA, to Susan A. Poling, GAO, May 13, 2004. On May 27, 2004, we received a supplemental response from Mr. Rey (Rey Response). This response provided answers to the specific questions we posed in our May 11 letter, documentation evidencing the contractual relationship between the Forest Service and OneWorld, and video material. We met informally with Forest Service officials, including Mr. Rey, on June 18 (June Meeting) to clarify the answers provided in both responses and to develop further the factual record. On July 8, 2004, we received additional documentation from Forest Service officials (July Response), including written communications between OneWorld and the Forest Service evidencing the business relationship between them.

As we explain below, the Forest Service did not violate the publicity or propaganda prohibition nor did it violate section 3107. The written and video materials provide the administration's view of the Forest Service's thinning policy on preventing catastrophic forest fires; while the Forest Service policy is controversial, the materials explaining the policy do not constitute prohibited publicity or propaganda. Furthermore, OneWorld was not acting as a "publicity expert" within the meaning of section 3107 when it assisted the Forest Service in the production of materials to help explain its thinning policy to the public. This opinion does not address the soundness or advisability of the policies addressed in the brochure and video at issue herein.

BACKGROUND

The Sierra Nevada Forest Plan Amendment

Under federal statute, the Secretary of USDA must maintain land and resource management plans for each unit of the National Forest System.[2] 16 U.S.C. § 1604. The Secretary also must revise these plans every 15 years or sooner if conditions in a forest unit have changed significantly. 16 U.S.C. § 1604(f)(5). After approximately a decade of reevaluation of the land and resource management plan for the Sierra

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[1] In a footnote, Ms. Bryson concluded also that the Forest Service did not violate the prohibition on paying for a publicity expert under 5 U.S.C. § 3107. She determined that, because section 3107 is closely related to the publicity or propaganda prohibition, the memorandum's analysis supports the conclusion that the brochure is not in violation of that section.

[2] A land management and resource plan includes the creation of three analytical documents: (1) a management plan, (2) an environmental impact statement (EIS), and (3) the record of decision (ROD). *See* 36 C.F.R. § 219.12(j). The process of creating these documents involves analysis of data by a team of individuals in various relevant professional disciplines and public comment. *See generally* 36 C.F.R. § 219.10. The ROD details the Forest Service's policy regarding the information contained in the EIS and management plan. *See* 36 C.F.R. § 219.12(j). All citations are to the Forest Service's 1982 planning regulations, under which the Plan Amendment was developed. *See* 2004 ROD at 20.

Nevada Forest region, the Forest Service issued the Plan Amendment.[3] On January 12, 2001, the Forest Service released its record of decision (ROD) for the Sierra Nevada Forest Plan Amendment providing the management direction for national forests in that region. ROD, Jan. 12, 2001 (2001 ROD), *available at* http://www.fs.fed.us/r5/snfpa (last visited August 27, 2004).

The 2001 ROD identified that a primary concern in creating forest management policy is the uncertainty of forest management activities on the wildlife habitat. *See* 2001 ROD at 21, 22. With regard to reducing the risks of catastrophic forest fires, the ROD focused on perpetuating old forest conditions and habitats for species associated with old forests. 2001 ROD at 36-37. Fire reduction techniques involved the setting of controlled fires and "understory thinning," or removal of trees less than 12 inches in diameter.[4] *Id.* at 36. The ROD proposed more aggressive fire treatment in urban wildland intermix zones but called for more restraint in fire management in areas outside the intermixed zones. *Id.* at 21. The 2001 ROD directives called for the Forest Service land managers to implement initiatives to sustain old forest species while considering necessary action to protect human life and property from the effects of wildfires. *See* 2001 ROD, App. A at 1.

After considering numerous appeals from the public, the 2001 ROD, and the accompanying final environmental impact statement (EIS), the reviewing officer affirmed the 2001 ROD and EIS. Decision for Appeals at 1, Nov. 16, 2001. He expressed concern, however, over the continued fire catastrophes occurring in California at that time. Without choosing another alternative fire management strategy, the reviewing officer's decision highlighted other possible alternatives that may more successfully suppress the unusually high fire activity in California. *Id.* at 3. The alternative plans treated forest areas more aggressively with increased thinning of trees and controlled fire. 2001 ROD at 19 to 21. Although the reviewing officer affirmed the 2001 ROD, he instructed the regional forester to reevaluate the plan in light of the increased fire activity and to consider more flexibility for aggressive fire protection treatment. Decision for Appeals at 4.[5]

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[3] Forest Service officials told us that the process for amending the Sierra Nevada Forest Plan began in 1993. June Meeting.

[4] The 2001 ROD did not limit thinning only to 12-inch-diameter trees. It allowed for removal of 20-inch-diameter trees, depending upon the makeup of the area undergoing treatment. 2001 ROD at 37.

[5] Under regulations applicable to the Plan Amendment development process, the Under Secretary may review appeals decisions. 36 C.F.R. § 217.17. Under Secretary Rey did not review this decision and returned the Amendment to the regional forester for action pursuant to the instructions in the appeal decision. June Meeting.

Pursuant to the reviewing officer's directive in the 2001 appeal order, the regional forester established a team to evaluate further the Plan Amendment.[6] Bryson Memo at 1. The work of the evaluation team eventually culminated in Management Review and Recommendations and a Supplemental Environmental Impact Survey (Supplemental EIS). *See id.; see also* ROD at 3, Jan. 21, 2004 (2004 ROD). After public comment on the Supplemental EIS, the regional forester replaced the 2001 ROD with a new ROD issued on January 21, 2004. As noted in the text of the 2004 ROD, the proposed changes to the Plan Amendment reflected the primary goal of reducing the risk of catastrophic forest fire to local communities. 2004 ROD at 3. The 2004 ROD found that the 2001 ROD did not provide adequate solutions for reducing the threat of wildfire. In particular, the 2004 ROD noted that using controlled fire was too risky in the current state of the Sierra Nevada forests and the proposed thinning activities were too meager. 2004 ROD at 5. Instead, the 2004 ROD proposed more thinning of larger trees in more remote areas. *See* 2004 ROD at 9. It also discussed the commercial aspects of allowing the removal of larger trees, but retained a limit on trees not larger than 30 inches in diameter. *See id.* The 2004 ROD chose an alternative management scheme that used thinning, salvage, and fire to meet its goals. *See id.* at 16. It asserted that this method would continue to preserve the 2001 ROD objectives of preserving old forest ecosystems; however, it acknowledged the method would change the current forest landscape by reducing density and regenerating shade intolerant species. *Id.*

Contract with OneWorld

With the Forest Service's growing concern over the media reaction to the release of the 2004 ROD, the Forest Service launched a media "campaign" with the objective of creating "a favorable public atmosphere for the [ROD] by presenting early and accurate messages and quick and direct responses to those who oppose [it]." Statement of Work for Sierra Nevada Framework Media Relations Strategy and Action Plan (Statement of Work) at 1. The Forest Service expressed concern that after the release of the Management Review and Recommendations in March 2003, and the Draft Supplemental EIS in June 2003, a "generally negative, distrustful tone [had] been established in the media and by some persuasive stakeholders . . . ." *Id.*

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[6] While the Forest Service was reevaluating the 2001 ROD, President Bush announced his administration's new policy on the national forests and the protection of surrounding communities from devastating forest fire, the Healthy Forest Initiative (Initiative). *See* Healthy Forests: An Initiative for Wildfire Prevention and Stronger Communities, Aug. 22, 2002, *available at* www.fs.fed.us/projects/hfi/background (last visited August 27, 2004). This new policy introduced aggressive fire management, including techniques of thinning, planned burns, and forest restoration. *See* Initiative at 2.

To meet its objectives, the Forest Service contracted with OneWorld,[7] which the Forest Service described as a marketing/advertising/public relations/media firm. Rey Response at 1. The contract required OneWorld to provide the following products and services: strategy development and management, creation of brochure, other written products, short video and power point presentations, review of existing Forest Service B-roll film, update of website to include new information regarding the plan, and training on improving interview and presentation skills. *See generally* Statement of Work, Jan. 5, 2004. Forest Service officials explained to us that, by the time OneWorld began providing services to aid in the media campaign, Forest Service had already devised language for a brochure for their contractor's review and that OneWorld provided editorial services to make the brochure easier to read. June Meeting; July Response. In essence, according to the Forest Service, OneWorld assisted in the rewriting of the brochure to turn scientific and technical language into text that could be more easily understood by the public and individuals without technical expertise in the management of forest health. *Id.*

Brochure

In response to your request, we analyzed the brochure that was provided to us with the Rey Response.[8] The brochure consists of six pages and two inserts that discuss forest fires, methods to reduce forest fires, the Forest Service plan to implement these methods, and the effects upon the ecosystem and wildlife in the Sierra Nevada. The brochure contains pictures of forests and forest fire, sketches, graphs, and maps relaying both basic information and statistical analysis. The title page proclaims that the Forest Service is engaging in "[a] Campaign Against Catastrophic Wildfires" and includes the phrase: "Forests with a Future." The brochure's title, "Protecting Old Growth Trees, Wildlife and Communities in the Sierra Nevada," describes the stated purpose of this campaign. In addition to the campaign declaration and brochure title, the Forest Service/USDA seal is prominently displayed in the bottom right hand corner of the first page of the brochure and the two inserts.

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[7] At the time the Forest Service entered into a contract with OneWorld, OneWorld was a contractor listed on the General Services Administration (GSA) Schedule of Contractors for providing document conversion services. GSA Schedule e-Library, Schedule 36, *available at* http://www.gsaelibrary.gsa.gov (last visited June 4, 2004). Although GSA maintains schedules describing more general public relations services, OneWorld is not listed on these schedules. Forest Service officials told us that they believed that OneWorld was listed as a contractor for general public relations work. Under its contract with OneWorld, the Forest Service paid OneWorld $89,642.14. *See* Rey Response, Billing Statement, February 9, 2004.

[8] The Forest Service revised and was in the process of distributing the revised brochure at the time that we were developing the record to respond to your request. Forest Service officials told us that they revised the brochure in response to criticism regarding the labeling of photographs as discussed later in this opinion. We have enclosed copies of both brochures.

The brochure states that the Sierra Nevada forests face increasingly catastrophic fires and that conditions are deteriorating because the forests have become too dense over time. The reader is told that historically the Sierra Nevada forests had fewer trees and underbrush, which allowed for "good fire" to clean the forest floor, and that today's denser forests are at risk for catastrophic wildfires. To illustrate the increased density in the forests, the Forest Service included a series of photographs depicting the increasing density of a forest from 1909 until 1989. The first picture in the series, a picture of trees and tree stumps, shows a forest that had recently been logged.

The brochure tells the reader that if no action is taken, the effect of wildfires will be devastating to the surrounding communities. The text states that in order to protect communities and wildlife "the forests of the future must become more like the forests of the past." The brochure claims that, in addition to safeguarding communities, the management methods will have a positive impact on indigenous wildlife. As an example, the brochure indicates that the decrease of wildfires resulting from the management methods will double the amount of old growth trees in the California Spotted Owl habitat.

The brochure notes several methods to reduce the risk of devastating fire, including controlled burns, removal of underbrush and thinning. The brochure says that thinning is necessary due to the current overgrown conditions in the Sierra Nevada forests. The reader is told that in addition to returning the forests to this historic state, the cost of thinning 20-to-30-inch-diameter trees will be offset by $80 million of revenues generated by tree removal. The brochure states, however, that only a selected few 20-inch to 30-inch trees will be removed.

The brochure mentions that the Plan Amendment forms the basis of the Forest With a Future Campaign. The brochure directs the reader to a web site, www.fs.fed.us/r5/snfpa, to obtain the ROD and Supplemental EIS. On the back side of the brochure, readers are asked to get involved with the Fire Safe Council and work with community organizations to identify resources available to undertake the thinning methods and other activities. At the end of the brochure, the Forest Service asks readers to learn about taking action and not to confuse thinning operations with logging operations of a decade ago. To that end, readers are directed again to the "Forest With a Future" and the Plan Amendment websites for further information.

Forest Service printed 20,000 brochures. Rey Response; June Meeting. The Forest Service publicly presented these brochures at a news conference to announce release of the ROD. The Forest Service forwarded packages of the brochures to the county supervisors of the 11 national forests and two research stations in the Sierra Nevada Region. Each of these recipients received 1000 brochures. Rey Response, Specifications at 3. Forest Service officials told us that county supervisors may have forwarded this material to other groups and individuals in their region. The brochures were also distributed internally to Forest Service employees and provided to members of the public requesting the information. June Meeting.

Video material

In addition to the printed brochure, OneWorld prepared a script for a video presentation and B-roll film of footage related to the national forests and the dangers of forest fires. OneWorld edited this script and B-roll into a 10-minute video presentation and created a separate tape with select B-roll footage.

Forest Service officials told us that the video presentation was shown only during the press conference announcing the 2004 ROD and was not used in any other capacity. The video presentation lasts approximately 10 minutes. The presentation begins with an image containing the Forest Service seal and then the words "The Sierra Forest Must Endure." The beginning images show the devastating effects of wildfire in the forests and to communities. The audience is told that the forests of today are overgrown and dense unlike the forests of the past. Some of the same photographs that were displayed in the brochure are displayed in this video to show the increased forest density. The video does not show the 1909 photograph. Animation compares the effects of fire in less dense forests and the effects of "crown" fire occurring in more dense forests. The presentation notes that thinning and controlled burning are necessary to lessen the risk of catastrophic fire. The presentation asks for a public commitment to the "Forest With a Future" Campaign. The final image tells the audience that the video was based upon the 2004 ROD, and identifies the websites for more information regarding the Plan Amendment and the supporting documentation.

Forest Service officials told us that the B-roll footage was available to local television stations from which they could create their own news reports. June Meeting. The B-roll film provides various video and audio shots of forest fires, firefighting efforts, various species of wildlife, and a group of scientists discussing solutions to protecting communities from wildfires. Forest Service did not provide any script with the B-roll nor did it provide suggestions for creating a news story for television stations to air to television audiences.

DISCUSSION

The Forest Service told us that it used appropriated funds from its Timber Management and Land Resource Management funds for fiscal year 2004 to pay for the production and distribution costs of the brochure and the video materials, including payments to OneWorld. Rey Response at 2. These funds were appropriated in the Department of the Interior and Related Agencies Act, 2004, Pub. L. No. 108-108, 117 Stat. 1241 (Nov. 10, 2003).

Publicity or Propaganda Prohibition

The Forest Service's use of fiscal year 2004 funds appropriated from Pub. L. No. 108-108 is limited by the governmentwide restriction on using appropriated funds for publicity or propaganda purposes. Specifically, this restriction provides: "No part of any appropriation contained in this or any other Act shall be used for publicity or

propaganda purposes within the United States not heretofore authorized by the Congress." The Consolidated Appropriations Act of 2004, Pub. L. No. 108-199, § 624, 118 Stat. 3, 356 (Jan. 23, 2004).[9]

We have recognized that the prohibition restricts materials that are self-aggrandizing, covert as to source, and purely partisan in nature.[10] *See generally* B-302710, May 19, 2004; B-302504, March 10, 2004. The brochure and video at issue here do not consist of messages that could be characterized as self-aggrandizing. They do not attempt to persuade the public as to the importance of the Forest Service and/or one of its officials. *Cf.* B-212069, Oct. 6, 1983 (Office of Personnel Management's press release informing the public of the Administration's position on pending legislation was not self-aggrandizement where there was no attempt to persuade the public of the importance of the government agency).

Furthermore, it is clear that the brochure and the video presentation do not constitute covert propaganda. Because the Forest Service and USDA emblems and names are prominently displayed on the cover, the government source is clear to the audience and to readers. *Cf.* B-302710 (Department of Health and Human Services' materials constituted covert propaganda because the materials failed to identify the government source to the entire target audience). The B-roll, which the Forest Service only distributed for local news stations to use as video for stories created by those news organizations, was also clearly identified to the news station source, the target audience of the B-roll film. *See id.* (B-roll film disseminated by the Department of Health and Human Services did not constitute covert propaganda because the audience of this material was the news stations, who were aware of the source of the materials). Accordingly, neither the brochure nor the video materials are covert propaganda for purposes of determining whether the Forest Service violated the publicity or propaganda prohibition.

To be characterized as purely partisan in nature, the brochure and video materials must be found to have been "designed to aid a political party or candidates." B-147578, Nov. 8, 1962. It is often difficult to determine whether materials are political or not because "the lines separating the nonpolitical from the political cannot be precisely drawn." *Id.*; B-144323, Nov. 4, 1960. An agency has a legitimate right to explain and defend its policies and respond to attacks on that policy.

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[9] Public Law 108-108, itself, does not prohibit the use of appropriated funds for publicity or propaganda purposes. The language of the publicity or propaganda prohibition in Pub. L. No. 108-199, however, applies to funds appropriated in "this or *any other* Act." Pub. L. No. 108-199, 118 Stat. 3, 355 (2004) (emphasis added). Accordingly, the prohibition applies to appropriations enacted in Pub. L. No. 108-108.

[10] We have not rejected the notion that a communication could be so misleading or inaccurate as to violate the prohibition; however, to date, we have not been presented with any such communication. We are not confronted with such a communication in this case.

B-302504, March 10, 2004. It is sometimes difficult to differentiate an agency's dissemination of information in exercising this legitimate right to explain and defend its policies from dissemination activities that are for purely political reasons. B-130961, Oct. 16, 1972 (Letter to Representative Richardson Preyer). A standard we apply resolving this struggle is that the use of appropriated funds is improper only if the activity is "completely devoid of any connection with official functions." B-147578, Nov. 8, 1962. We do not raise any objection to the use of appropriated funds if an agency can reasonably justify the activity as within its official duties. *See* B-144323, Nov. 4, 1960.

As noted above, Forest Service officials told us that the decision to create a brochure and other video materials was based in part upon a desire to better inform the public about the very complicated issue of fire management and protection from catastrophic wildfire. The statute creating the USDA authorizes the USDA to disseminate information "on subjects connected with agriculture . . . ." 7 U.S.C. § 2201. As explained in the Background section of this opinion, the Forest Service, an agency of USDA, is required to devise land resource and management plans for each unit of the National Forest System. *See* 16 U.S.C. § 1604(f)(5). The Plan Amendment is a plan created under the statutory authority of the Forest Service. Providing the public with information about the Plan Amendment, particularly in a form that the public can easily understand, certainly falls within the scope of USDA's specific statutory authority to provide information to the public on "subjects connected with agriculture." 7 U.S.C. § 2201. The Plan Amendment includes the 2004 ROD, Supplemental EIS, and the final EIS from 2001, which together consist of more than 500 pages replete with technical terminology and addressing land resource information in addition to fire management and wildfires. The Forest Service produced a brochure and video materials to explain some the policies put forth under the Plan Amendment and the supporting documentation, including the 2004 ROD. [11]

Also, as noted above, work order papers and other documents provided to us reveal that the Forest Service designed the brochure and video materials to rebut negative media attention surrounding the policies put forth in the 2004 ROD. The Forest Service has a legitimate right to defend its policies. The Forest Service was well aware of the opposition to its proposed policy changes. Various environmental and other public-interest groups attacked these policies when introduced by the Healthy Forest Initiative.[12] Public comments on the EIS, for example, demonstrate concern over the impact on wildlife habitat if the Forest Service were to increase the number of larger trees that it might remove. The Forest Service's production of the brochure and video materials to explain and defend its fire management policies does not violate the publicity or propaganda prohibition.

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[11] This opinion does not evaluate the accuracy of the analysis or the conclusions put forth in those documents.

[12] See note 6.

The materials are not comprehensive and do not explain all the positive and negative effects of the thinning policy central to its new fire management policies. Indeed, these materials discuss the possible positive results without discussing the negative impact that such policy could have on the environment or wildlife habitat. For example, the brochure mentions the positive impact that decreasing the forest fire threat could have on the indigenous wildlife, but contains no information regarding the threat aggressive forest management will have on these creatures' natural habitats.

The fact that the materials do not present both the negative and positive consequences, however, does not render them purely partisan in violation of the publicity or propaganda prohibition. On the contrary, our recent cases have recognized that restricting all materials that arguably have or are perceived as having some partisan content would hinder the legitimate exercise of the agencies' authority to inform the public of its policies, to justify its policies, and to rebut attacks upon its policies. *See, e.g.,* B-302504, March 10, 2004. Accordingly, while the brochure and video materials may provide only information that supports the Forest Service's view of the need for more aggressive thinning and tree removal, this does not render the material purely partisan in violation of the publicity or propaganda prohibition.

Finally, we note that much controversy surrounds the strip of photographs in the brochure depicting increasing density in a forest from 1909 until 1989. The photographs fail to acknowledge that the forest pictured is not part of the Sierra Nevada nor that the first picture taken in 1909 had been recently logged.[13] The text preceding the strip of photographs leaves the reader of the brochure with the impression that the 1909 picture is the "natural" state of the forest. That text reads:

> "Historically the forests of the Sierra Nevada had fewer trees and less underbrush. When wildfire came, it burned low and slow, removing small vegetation and 'cleaning' the forest 'floor.' This kind of fire was a natural part of the ecosystem, helping old growth trees to survive . . .
>
> We need future forests more like past forests.
>
> [t]here should be open stands of large trees . . .
>
> Restoring the entire forest to its former safer state, with fewer trees and less underbrush, would be a gargantuan task."

The Forest Service has claimed that this series of photographs was intended to illustrate increasing density over time and did not intend to deceive the public by

[13] A close examination of this photograph reveals stumps in the background. This series of photographs has been used in several other reports regarding forests and fire management in a larger size, including GAO. *See, e.g.*, GAO, *Western National Forests: A Cohesive Strategy is Needed to Address Catastrophic Wildfire Threats*, GAO/RCED-99-65 (Washington, D.C.: April 2, 1999).

representing the first picture of the series as a natural state of the Sierra Nevada in 1909. *See* Rey Response at 2. In later versions of the brochure, the Forest Service has clearly identified that the pictures were not pictures of the Sierra Nevada and their purpose was to exhibit increased density of the forests over the time period mentioned.[14] Indeed, in the original version of the brochure, the pictures are labeled "Increasing Density" and the brochure does not state that the 1909 picture was a "natural state" of the Sierra Nevada forests. Although the Forest Service could have been more careful in its labeling of the pictures to eliminate any inference that the logged 1909 forest was a more natural state of the forest, the Forest Service's failure to do so does not constitute a violation of the publicity or propaganda prohibition. The Forest Service's explanation and the remedial measures taken in the second printing of the brochure support its assertions that the series of photographs was intended only to exhibit increased forest density over time.

Section 3107—Publicity Experts

You also asked us to determine whether the Forest Service violated section 3107 by hiring OneWorld to assist with production and dissemination of materials related to its "Forests With a Future Campaign." As stated in the work orders and supporting materials provided by the Forest Service, the Forest Service hired OneWorld, a public relations firm, to make the technical language of the ROD and the Plan Amendment easier for the public and media to understand. *See* Rey Response at 1.

Section 3107 provides that "[a]ppropriated funds may not be used to pay a publicity expert unless specifically appropriated for that purpose." 5 U.S.C. § 3107. This restriction applies to the use of all appropriated funds, including the appropriations used to produce and distribute the brochure and video materials at issue here.[15] Section 3107 was enacted in 1913 and has not been amended.

The statutory language of section 3107 focuses on paying a "publicity expert." Notwithstanding the fact that the Forest Service describes OneWorld as a public relations specialist, our determination of whether OneWorld qualifies as a "publicity expert" for purposes of section 3107 is based upon the meaning of "publicity expert" as used in the law. Our case law has rarely addressed a challenge to agency expenses for information dissemination activity under section 3107. Our cases have noted difficulty in applying the provision due to the lack of definitional guidance in the statute and the need to protect an agency's right or duty to inform the public

[14] The Forest Service provided us an updated version of the brochure it is distributing to its regional offices. We were told that the Forest Service changed the labeling of the series of photographs when alerted to the controversy noted here. *See* note 8.

[15] The Forest Service told us that the funds used to pay OneWorld and the costs associated with producing and distributing the brochure and video materials were appropriated in the Department of the Interior and Related Agencies Act, 2004, Pub. L. No. 108-108, 117 Stat. 1241 (Nov. 10, 2003).

regarding its activities and programs. *See* B-139965, Apr. 16, 1979 (noting the lack of definitional guidance in section 3107); A-82332, Dec. 15, 1936 (noting that what later became section 3107 was not intended to restrict legitimate informational activities). Given the absence of definitional guidance in the statute, we look to the legislative history of the provision to ascertain what Congress meant to prohibit when it passed what is now section 3107 in 1913. We find the legislative history particularly illuminating.

When Representative Gillett introduced this bill, he expressed that his intention was to prohibit the employment of someone "simply as a press agent" without specific authorization from Congress. 50 Cong. Rec. 4409 (1913). Floor debates revealed that supporters intended not necessarily to prohibit employing someone whose duties were "as a press agent," but to prohibit the use of press agents "to extol or to advertise" the agency or individuals within the agency. 50 Cong. Rec. at 4410 (comments of Representative Fitzgerald, chairman of committee that reported the bill). Importantly, the floor debates clearly revealed that the provision was not meant to prohibit legitimate information dissemination regarding agency work or services. When some Members expressed concern that the provision may affect the hiring of experts to "mak[e] our farm bulletins more readable to the public and more practical in their make-up," supporters indicated that such bulletins and the hiring of individuals to make the bulletins more readable would not be restricted by its passage. *Id.* at 4410 (statement of Representative Lever). Moreover, supporters of the proposed legislation specifically clarified that it would not prevent the USDA from providing the public with information regarding its work. *Id.*

In our view, the legislative history establishes that section 3107 was not to be applied to impede the legitimate informational functions of the agencies. As we discussed earlier, agencies have a legitimate right to disseminate agency products and information about agency policies. As the legislative history of section 3107 suggests, this includes the right to establish mechanisms to enable the dissemination of information, which today would include, for example, mechanisms such as internet web sites not envisioned in 1913. Nor do we read section 3107 to prohibit the use of appropriated funds to pay press agents and public affairs officers to facilitate and manage the dissemination of agency information. Instead, what Congress intended to prohibit with section 3107 is paying an individual "to extol or to advertise" the agency, an activity quite different from disseminating information to the citizenry about the agency, its policies, practices, and products.

Given the above discussion, in our opinion, section 3107 does not apply to the contract or payment between the Forest Service and OneWorld. Although as a public relations firm OneWorld provided more than just editorial services in creating more readable documents, OneWorld's services did not go beyond making the policies put forth in the Plan Amendment documents more accessible and understandable to the public and media. According to documents that the Forest Service provided to us, OneWorld advised the Forest Service concerning the best methods and language to put forth the policies announced in 2004 ROD. *See* July Response, Memo from

OneWorld. OneWorld also identified ways to explain this policy more effectively to special interest groups within the population. *See id.* at 3-4.

The tools available to disseminate information have changed drastically in the 91 years since the enactment of section 3107. Indeed, we have changed from a nation relying predominately upon the written word to one engaged in instant communication through broadcast, satellite, and internet communications. The work orders made available to us clearly show that Forest Service hired OneWorld to help communicate to the public the 2004 ROD policies and conclusions and to advise the Service on how to utilize effectively the available media resources. Since OneWorld's services did not go beyond making the Forest Service's complicated and technical policy discussions more understandable to the public, section 3107 does not apply to prohibit the payment to OneWorld for services rendered.

CONCLUSION

The Forest Service production and distribution of the brochure and video materials regarding the Plan Amendment and the 2004 ROD did not violate the publicity or propaganda prohibition of the Consolidated Appropriations Act of 2004, Pub. L. No. 108-199, Div. F, Tit. VI, § 624, 118 Stat. 3 (2004) or 5 U.S.C. § 3107. The materials produced by OneWorld for the Forest Service did not constitute self-aggrandizement, covert propaganda, or purely partisan materials, in violation of the publicity or propaganda prohibition. While the materials did not provide a balanced picture of the positive and negative aspects of the thinning policies as portrayed in 2004 ROD and supporting documents, the Forest Service was authorized to disseminate such materials under its information dissemination authority and in defense of its own policies. We also find that OneWorld was not acting as a "publicity expert" as defined by section 3107 when it assisted the Forest Service with producing materials to help explain its controversial thinning policy to the general public.

Anthony H. Gamboa
General Counsel

Enclosures