

Decision

Matter of: Department of the Interior—Obligation of Amounts for the 2019 Fourth of July Events on the National Mall

File: B-332322

Date: October 19, 2021

DIGEST

The Department of the Interior (Interior) did not violate the purpose statute when it obligated Federal Lands Recreation Enhancement Act (FLREA) appropriated amounts for event-related expenses associated with the Salute to America portion of the 2019 Fourth of July events. Additionally, Interior did not violate the purpose statute when it obligated amounts from its Centennial Challenge appropriation for the Salute to America fireworks display. Interior's obligations were reasonably and logically related to the purposes identified in FLREA and the Centennial Challenge appropriation.

DECISION

This responds to your request for our decision on the Department of the Interior (Interior) and its use of appropriated amounts for the 2019 Fourth of July events on the National Mall.¹ You asked whether Interior's use of Federal Lands Recreation Enhancement Act (FLREA) appropriated amounts and the Centennial Challenge appropriation for the 2019 Fourth of July events on the National Mall was consistent

¹ Letter from Patrick Leahy, Vice Chairman, Committee on Appropriations, United States Senate; Tom Udall, Ranking Member, Subcommittee on the Interior, Environment, and Related Agencies, United States Senate; and Chris Van Hollen, Member, Committee on Appropriations, United States Senate, to the Comptroller General (June 25, 2020) (Request Letter). To respond to your request, we also issued an audit report assessing the costs and impacts associated with the 2020 Fourth of July events and the protective measures taken in response to COVID-19. See GAO, *Estimated Costs and COVID-19 Protective Measures for 2020 Fourth of July Events*, [GAO-21-458](#) (Washington, D.C.: June 21, 2021).

with principles of federal appropriations law, including the purpose statute, 31 U.S.C. § 1301(a).²

As explained below, we conclude that Interior did not violate the purpose statute when it obligated FLREA appropriated amounts to fund the Salute to America event. Additionally, Interior did not violate the purpose statute when it obligated the Centennial Challenge appropriation to fund the Salute to America fireworks display.

In accordance with our regular practice, we contacted Interior to seek factual information and its legal views on this matter.³ Interior responded with its explanation of the pertinent facts and its legal analysis.⁴

BACKGROUND

Every year the federal government hosts a Fourth of July celebration on the National Mall.⁵ While many government agencies participate in these events, Interior plays a significant role in overall organization. Specifically, Interior's National Park Service (Park Service) is responsible for planning, producing, and executing A Capitol Fourth

² Request Letter, at 3.

³ GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 5, 2006), available at <https://www.gao.gov/products/GAO-06-1064SP> (last visited Aug. 17, 2021); Letter from Assistant General Counsel, GAO, to Solicitor, Department of the Interior (Sept. 3, 2020); Telephone Conversation with Acting Deputy Associate Solicitor, Interior, Assistant General Counsel for Appropriations Law, GAO, and Staff Attorney, GAO (July 9, 2021); Email from Staff Attorney, GAO, to Senior Counselor to the Associate Solicitor for General Law, Interior, *Subject: GAO inquiry into use of FLREA fees & Centennial Challenge fund for 2019 Fourth of July events* (July 12, 2021).

⁴ Letter from Acting Deputy Associate Solicitor, Interior, to Assistant General Counsel, GAO (Nov. 13, 2020) (Response Letter); Email from Senior Counselor to the Associate Solicitor for General Law, Interior, to Staff Attorney, GAO, *Subject: GAO inquiry into use of FLREA fees & Centennial Challenge fund for 2019 Fourth of July events* (July 14, 2021).

⁵ See GAO, *Independence Day Celebrations: Estimated Costs for Fourth of July Events on the National Mall for 2016 through 2019*, [GAO-20-470](#) (Washington, D.C.: June 17, 2020). We issued both a legal decision and an audit report concerning the 2019 Fourth of July events. See B-331262, June 17, 2020 (concluding executive agencies' communications to the public about the Fourth of July events did not violate the prohibitions against grassroots lobbying or publicity or propaganda); [GAO-20-470](#) (reviewing the impacts and estimated costs associated with the Fourth of July events on the National Mall from 2016 through 2019).

Concert, the National Independence Day Parade, and the Independence Day Fireworks Display. For the 2019 celebrations, the federal government sponsored a new event, A Salute to America, showcasing military band performances, a military display, and a speech by the President of the United States.⁶

In planning the Salute to America event, the Park Service entered into a Memorandum of Agreement with the White House Office.⁷ Under the agreement, the White House Office was responsible for contracting with a private company to produce the event, while the Park Service provided funding.⁸ The Park Service then signed two Reimbursable Agreements with the Executive Office of the President agreeing to transfer \$2.45 million to the Executive Office of the President for “official costs associated with the temporary facility enhancement and visitor services related to the President’s participation in the Independence Day Celebration on the National Mall.”⁹ The Executive Office of the President then contracted with a private entity to produce the event.¹⁰ The contractor provided tents, staging, labor, security, trucking, power, facilities, staff support, bicycle racks, and bleachers in addition to general event production.¹¹

To fund the Salute to America portion of the events, the Park Service obligated amounts it collected pursuant to FLREA.¹² FLREA authorizes certain federal land management agencies, including the Park Service, to charge and collect recreation fees on federal recreational lands and waters. Pub. L. No. 108-447, div. J, title VIII, §§ 802–815, 18 Stat. 2809, 3377 (Dec. 8, 2004), 16 U.S.C. §§ 6801–6814. FLREA also appropriates to the Park Service the amounts it collects and makes them available until expended. 16 U.S.C. § 6806(b). In relevant part, amounts FLREA appropriates are available for “repair, maintenance, and facility enhancement related directly to visitor enjoyment, visitor access, and health and safety[.]” 16 U.S.C. § 6807(a)(3)(A).

⁶ [GAO-20-470](#).

⁷ Memorandum of Agreement between the Park Service and the White House Office (June 25, 2019) (Memorandum of Agreement).

⁸ *Id.* at 2-4.

⁹ Response Letter, at 9; Reimbursable Agreement between Executive Office of the President and the Park Service, Letter of Financial Commitment, ¶ 1 (July 1, 2019) (July Reimbursable Agreement); Reimbursable Agreement between the Executive Office of the President and the Park Service, Letter of Financial Commitment, ¶ 1 (June 24, 2019) (June Reimbursable Agreement).

¹⁰ Response Letter, at 9.

¹¹ Interior, National Mall Fourth of July Expenditures, Executive Office of the President Detailed Cost Breakout (Feb. 2, 2021) (Detailed Cost Breakout).

¹² Response Letter, at 9.

As part of the Salute to America event, the Park Service also expanded its traditional fireworks to include a second fireworks display.¹³ The Park Service received a donation of fireworks and associated pyrotechnical and logistical services from a private entity valued at \$413,300.¹⁴ The Park Service matched the donation with \$347,277 from its Centennial Challenge appropriation, which is available to match donations for projects and programs that “carry out authorized functions and responsibilities” of the Department of the Interior with respect to any Park Service unit or program. Response Letter, at 7-8; Department of the Interior, Environment, and Related Agencies Appropriations Act, 2019, div. E, title I, Pub. L. No. 116-6, 133 Stat. 13, 213 (Feb. 15, 2019). The Park Service obligated the Centennial Challenge appropriation to cover the increased costs associated with adding a second fireworks display. This entailed expenses for increased labor, security, emergency and medical personnel, and temporary infrastructure such as fencing, lighting, and toilets.¹⁵

DISCUSSION

At issue here is (1) whether FLREA appropriated amounts were available for the Salute to America event and (2) whether the Centennial Challenge appropriation was available for the Salute to America fireworks display.

Use of FLREA amounts

Under the purpose statute, appropriations are available only for the purposes for which Congress provided them.¹⁶ 31 U.S.C. § 1301(a). Congress made FLREA amounts available for particular purposes: specifically, for “repair, maintenance, and facility enhancement related directly to visitor enjoyment, visitor access, and health and safety[.]” 16 U.S.C. § 6807(a)(3)(A). We first consider whether Interior’s obligation of these amounts for activities associated with the Fourth of July events was consistent with FLREA and, therefore, with the purpose statute.

Interior could permissibly obligate FLREA amounts for the Fourth of July events only if there was a reasonable, logical relationship between the obligations and the purposes stated in FLREA. B-329446, Sept. 17, 2020. Interior has a degree of discretion to determine how to carry out its authorized activities. When we review Interior’s activities, the question is “whether the expenditure falls within the agency’s

¹³ Response Letter, at 2.

¹⁴ Response Letter, at 2, 8; Donation Agreement (June 14, 2019).

¹⁵ Response Letter, at 11.

¹⁶ When applying the purpose statute to a transfer made under an interagency agreement, we look to the ordering agency’s appropriation and not that of the performing agency. B-330775.1, Oct. 1, 2020; B-328477, Sept. 26, 2017.

legitimate range of discretion, or whether its relationship to an authorized purpose or function is so attenuated as to take it beyond that range.” B-223608, Dec. 19, 1988.

Here, Interior obligated amounts to fund an event-production contract for “official costs associated with temporary facility enhancement and visitor services related to the President’s participation in the Independence Day celebration on the National Mall.”¹⁷ The contractor provided supplies and equipment including tents, bleachers, and bicycle racks along with labor for stage construction, security, and production of the Salute to America event.¹⁸ Interior determined that these improvements to the National Mall along with the additional safety services and supporting infrastructure enhanced visitors’ enjoyment of the National Mall.¹⁹

While the facility enhancements in this case were temporary, Interior concluded that their temporary nature in no way diminished the benefit to visitors.²⁰ In addition, Interior noted that FLREA does not confine “facility enhancement” to only those activities permanent in nature. According to Interior, the statute is sufficiently broad to include both permanent enhancements as well as those made for a time-limited purpose, as seen here.²¹ Consistent with this interpretation, the Park Service previously obligated FLREA amounts for temporary facility enhancement in other circumstances. For instance, Interior obligated FLREA amounts to rent portable toilets for an event at the Devil’s Tower National Monument, to develop and fabricate temporary exhibits at the Fort Laramie National Historic site, and to fund a Memorial Day ceremony at the Perry’s Victory and International Peace Memorial.²² The Park Service’s prior obligations of FLREA amounts reflect the agency’s longstanding application of its interpretation of the purposes for which FLREA amounts are available.

When evaluating Interior’s activities, we determine not whether we would have carried out these activities in the same manner, but rather whether Interior’s use of FLREA amounts falls within a “legitimate range of discretion”. B-223608, Dec. 19, 1988; *see also United States Department of the Navy v. Federal Labor Relations Authority*, 665 F.3d 1339, 1349 (D.C. Cir. 2012). The obligations for the Fourth of July events are not so attenuated from the authorized purpose of FLREA as to take them outside the range of reasonable agency discretion. Interior could reasonably conclude that the erection of temporary facilities related to the Fourth of July events

¹⁷ July Reimbursable Agreement; June Reimbursable Agreement.

¹⁸ Detailed Cost Breakout.

¹⁹ Response Letter, at 2.

²⁰ Response Letter, at 4.

²¹ *Id.*

²² See Letter from Associate Solicitor, Interior, to Assistant General Counsel, GAO (Sept. 6, 2019), Attachment 4b (FY 2018 Funded Recreation Fee Projects), at 62, 67, 168.

on the National Mall bore a rational relationship to a purpose for which FLREA amounts were available—namely, for facility enhancement related directly to visitor enjoyment. Therefore, Interior has provided sufficient justification for how FLREA amounts are available for the Fourth of July expenses, and obligations for those expenses do not violate the purpose statute.

Use of Centennial Challenge Appropriation

For fiscal year 2019, Congress appropriated \$20 million to the Park Service for Centennial Challenge projects and programs. Pub. L. No. 116-6, 133 Stat. at 213. We next consider whether the Park Service's obligation of these amounts to supply the federal match for the Salute to America fireworks display was consistent with the purpose statute.

The Park Service may obligate amounts appropriated for Centennial Challenge projects and programs only if it makes the obligation pursuant to an agreement between the agency and a cooperator "for the purpose of sharing costs or services in carrying out authorized functions and responsibilities" of the Department of the Interior with respect to any Park Service unit or program. Pub. L. No. 116-6, 133 Stat. at 213; 54 U.S.C. § 101701(a)(1). The Park Service determined that an additional fireworks display would enhance the visitor experience of the National Mall in accordance with the agency's mission. Response Letter, at 7; see also 54 U.S.C. § 100101 (Interior and the Park Service shall "promote and regulate the use of the National Park System"). Accordingly, the Park Service entered into a challenge cost-share agreement with an eligible cooperator. See 54 U.S.C. § 101701(b); Donation Agreement; Response Letter, at 2, 7. The purpose of the agreement was to share costs and responsibilities associated with the Salute to America fireworks display.

As with the obligations discussed above for the event-production contract for the Salute to America event, Interior could reasonably conclude that the provision of a Fourth of July fireworks display on the National Mall furthered Interior's accomplishment of its statutory mission. Interior has provided sufficient justification that the obligation for the cost-share agreement is consistent with the terms of the fiscal year 2019 Centennial Challenge appropriation and, accordingly, with the purpose statute.²³

²³ In addition, no less than 50 percent of the total cost of each project or program must be derived from non-Federal sources in the form of donated assets. Pub. L. No. 116-6, 133 Stat. at 213. Consistent with this requirement, the Park Service received a donation for fireworks and associated services, valued at \$413,300, and the agency matched the donation with \$347,277 from the Centennial Challenge appropriation. Fireworks Invoice, Fireworks by Grucci Inc. (June 28, 2019); Response Letter, at 8.

CONCLUSION

Interior did not violate the purpose statute when it obligated FLREA appropriated amounts for the Salute to America portion of the 2019 Fourth of July celebration. Additionally, Interior did not violate the purpose statute when it obligated the Centennial Challenge appropriation for the Salute to America fireworks display.

A handwritten signature in black ink that reads "Edda Emmanuelli Perez". The signature is written in a cursive, flowing style.

Edda Emmanuelli Perez
General Counsel