

ORIGINAL

No. 11671

**In the United States Circuit Court of Appeals
for the Ninth Circuit**

UNITED STATES OF AMERICA, APPELLANT

v.

SHOFNER IRON AND STEEL WORKS, A CORPORATION,
APPELLEE

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF OREGON

BRIEF FOR THE UNITED STATES

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OPINION BELOW

The opinion of the district court (R. 39-43) is reported at 71 F. Supp. 161.

JURISDICTION

This is a suit brought by the United States to recover possession of property wrongfully held by the defendant (R. 16-19). The jurisdiction of the district court rested upon Section 24 (1) of the Judicial Code, 28 U. S. C. sec. 41 (1). By a decision and order entered February 6, 1947, the trial court granted a motion to dismiss the complaint as to the first cause of action (R. 43) and on February 15,

1947, an order was entered dismissing that cause of action (R. 24). Notice of appeal was filed May 2, 1947 (R. 30-31). The jurisdiction of this Court is invoked under Section 128 of the Judicial Code as amended, 28 U. S. C. sec. 225 (a).

QUESTION PRESENTED

Whether the United States may maintain a suit to recover possession of property owned by and formerly under the jurisdiction of the Reconstruction Finance Corporation which has been declared surplus to the needs of the Reconstruction Finance Corporation and transferred to the jurisdiction of the War Assets Administration under the Surplus Property Act.

STATUTES AND EXECUTIVE ORDER INVOLVED

The pertinent provisions of the Surplus Property Act of October 3, 1944, 58 Stat. 765, c. 479 as amended, 50 U. S. C. App. Supp. V, secs. 1611-1646; the Act of September 18, 1945, 59 Stat. 533, c. 368, secs. 1-2, 50 U. S. C. App. Supp. V, secs. 1614a-1614b; and of Executive Order No. 9689, 11 Fed. Reg. 1265 (1946), are set out in the Appendix, *infra*, pp. 16-22.

STATEMENT

This is a suit brought by the United States to recover possession of certain property, and the facts of the case, as they appear in the pleadings, may be summarized as follows:

In September 1942, the Defense Plant Corporation entered into a lease agreement with the Shofner Iron and Steel Works, whereby it leased certain described property to Shofner (R. 16-17). At the time of the

agreement the property was owned by Shofner, but in accordance with the terms of the lease Defense Plant acquired title from Shofner on January 30, 1943 (R. 16, 18). On July 1, 1945, the Reconstruction Finance Corporation succeeded to all right, title and interest of Defense Plant in the land and all rights of Defense Plant under the lease (R. 18). RFC terminated the lease in accordance with its terms effective as of December 5, 1945 (R. 18). Thereafter RFC consented to Shofner's remaining in possession until May 15, 1946 (R. 18). Since that time Shofner has remained in possession without authority, right, title or interest (R. 18). On May 24, 1946, RFC declared the premises and facilities surplus and transferred jurisdiction of the property to the War Assets Administration pursuant to the Surplus Property Act of October 3, 1944, 58 Stat. 765, as amended and regulations thereunder (R. 18-19). On August 12, 1946, a suit was instituted in the name of the United States by the filing of a complaint which set forth the above facts (R. 2-5) and, alleging the right of the United States to possession and Shofner's unlawful and wrongful withholding of possession, prayed for judgment against Shofner for possession of the property (R. 5).

On September 13, 1943, Shofner moved for leave to make RFC a third-party defendant so that it might assert a counter-claim against RFC (R. 9). By affidavit in support of the motion Shofner stated that Defense Plant had constructed a foundry for the production of steel castings on the premises described in the complaint and leased to Shofner; that in the

latter part of December, 1944, Defense Plant agreed to make certain changes in its foundry plant for the purpose of increasing production, but such changes were not made; that Shofner's claim against RFC arose out of the failure of Defense Plant to make the changes which allegedly resulted in damage to Shofner and that this and other rights and claims against RFC could not be determined in the suit without the presence of RFC (R. 10-14). The motion was denied on November 15, 1946, by Judge McColloch (R. 15).

On November 26, 1946, the United States filed an amended complaint setting forth two causes of action, the first being the same cause alleged in the original complaint (R. 16-21). For a second cause of action, the United States alleged that Shofner had leased certain other described property to the United States for twenty years, that the United States had the right to possession under the lease and Shofner unlawfully and wrongfully withheld possession (R. 19-21). The relief prayed for was possession of the described properties (R. 21).

Shofner moved on December 5, 1946, for a dismissal of the cause on the ground that neither the complaint nor the amended complaint stated a claim on which relief could be granted and that the United States was not the real party in interest (R. 23). On February 6, 1947, District Judge R. Lewis Brown granted the motion to dismiss the amended complaint insofar as it related to the first cause of action on the ground that RFC and not the United States was the real party in interest (R. ³⁹⁻⁴³). The motion to dismiss was de-

nied as to the second cause of action because it did not appear from the allegations in the amended complaint that anyone other than the United States was or could be the real party in interest (R. 43).¹ An order dismissing the first cause of action was entered February 15, 1947 (R. 24). On February 19, 1947, the Government moved to amend the order so as to allow it time within which to file an amended complaint naming RFC as a party plaintiff, but the motion was denied on March 6, 1947, by Judge Foley (R. 25-27). Thereafter, this appeal was taken (R. 30).²

SPECIFICATION OF ERRORS

The district court erred—

1. In dismissing the amended complaint of the United States as to the first cause of action.
2. In holding that the United States was not the real party in interest.
3. In holding that the United States was not a proper party to maintain the action.
4. In holding that RFC was the real party in interest.
5. In holding that only RFC could maintain the action.

¹ Inasmuch as the status of the United States in the second cause of action was in fact no different from its status in the first cause, the second cause of action was subsequently dismissed without prejudice upon motion by the Government (R. 28-30).

² The notice of appeal referred to the order of February 6, 1947, granting the motion to dismiss. That order was implemented by the formal order of dismissal on February 15, 1947 (R. 24).

ARGUMENT

The United States may maintain a suit to recover possession of property declared surplus by RFC against a defendant wrongfully in possession

A. *The United States may maintain the suit by virtue of the provisions of the Surplus Property Act.*—The property here involved was acquired by Defense Plant Corporation and leased to Shofner to provide facilities for the production of steel castings needed in the prosecution of the war (cf. R. 10-13). Defense Plant was a corporation created by RFC under authority of Section 5 (d) of the Reconstruction Finance Corporation Act, as amended by Act of June 25, 1940, 54 Stat. 572, c. 427, sec. 5, as amended, 15 U. S. C., sec. 606b (3), for the purpose (among other things) of acquiring real estate to build or expand plants for the manufacture of arms, ammunition and implements of war in aid of the national defense program. 6 Fed. Reg. 2971 (1941). Stock in the Defense Plant Corporation was wholly owned by RFC, the stock of which, in turn, is wholly owned by the United States. 6 Fed. Reg. 2971 (1941); RFC Act, sec. 2, as amended, 15 U. S. C. sec. 602. On July 1, 1945, Defense Plant Corporation was dissolved and all its functions, powers, duties, assets, liabilities, etc., were transferred to RFC. Joint Resolution of June 30, 1945, c. 215, 59 Stat. 310, 15 U. S. C. Supp. V, sec. 606b, note. Thus RFC succeeded to all right, title, interest and obligations of Defense Plant with reference to the property here involved.

As alleged in the Government's amended complaint, RFC terminated Shofner's lease to the property in accordance with its terms effective December 5, 1945 (R. 18). As further alleged, Shofner's right to possession was extended by agreement to May 15, 1946 (R. 18) and since that time Shofner has unlawfully and wrongfully withheld possession (R. 19). On May 24, 1946, RFC declared the premises and facilities surplus and transferred jurisdiction to the War Assets Administration pursuant to the Surplus Property Act and regulations thereunder (R. 18-19). Since the War Assets Administration is an administrative agency of the Government and not a Government corporation having the right to sue and be sued, this suit to recover possession of the property was instituted in the name of the United States. The court below dismissed the suit on the theory that RFC, a Government corporation having the right to sue and be sued in its own name, was the real party in interest (R. 41-42). We submit that this ruling was plainly erroneous because it ignored the provisions of the Surplus Property Act.

A great deal of property was acquired during the war by various Government agencies, including Government corporations, for use in prosecution of the war. Since various properties from time to time were no longer needed for the purposes for which they were acquired and in anticipation of the termination of the war, the Surplus Property Act of October 3, 1944, 58 Stat. 765, c. 479, was passed to create a central Government agency to facilitate and regulate the orderly

disposal of surplus property in accordance with certain objectives laid down by Congress. The Act applied to property of Government corporations such as RFC and Defense Plant. Surplus Property Act, sec. 3, 50 U. S. C. App. Supp. V, sec. 1612. The original Act created a Surplus Property Board to have general supervision and direction over the care and disposition of surplus property. Surplus Property Act, secs. 5-6, 50 U. S. C. App. Supp. V, secs. 1614-1615. Among its duties was the designation of other Government agencies as agencies to dispose of property, i. e. "disposal agencies." *Id.* Section 10, 50 U. S. C. App. Supp. V, sec. 1619. Thus, property declared surplus by the Navy Department, depending on its type, might be disposed of either by the Treasury Department, the State Department or the Department of the Interior. By the Act of September 18, 1945, c. 368, secs. 1-2, 50 U. S. C. App. Supp. V, secs. 1614a-1614b, the Surplus Property Administration, headed by the Surplus Property Administrator, was created, the Surplus Property Board was abolished and its functions transferred to the Surplus Property Administrator. The activities of the newly created agency were, like those of the Board, confined to policy making functions and disposal functions were carried out by the disposal agencies designated by the Board or its successor, the Surplus Property Administrator. However, effective March 25, 1946, both the policy making functions and the disposal functions, with exceptions not here important, were consolidated in one agency, the War Assets Administration, headed by the War

Assets Administrator. Executive Order No. 9689, 11 Fed. Reg. 1265 (1946). Consequently, the War Assets Administration is now vested with the powers and responsibilities of disposing of surplus property of the type involved here.³

The Surplus Property Act, as now administered, requires Government agencies owning property which is surplus to their needs and responsibilities to report such property to the War Assets Administration. Section 11, 50 U. S. C. App. Supp. V, sec. 1620. Whenever any surplus property is reported, the disposal agency (in this case, the War Assets Administration) is given the responsibility and authority to dispose of it and to care for and handle it pending its disposition. Surplus Property Act, section 11 (d), 50 U. S. C. App. Supp. V, sec. 1620 (d).⁴ Under the statute the War Assets Administration is authorized to "dispose of such property by sale, exchange, lease or transfer" and may execute or require any owning agency to execute such documents as it deems necessary to transfer title or take such other action as it deems necessary or proper to transfer or dispose of property or

³ For the succession of agencies designated to dispose of industrial real property, under which classification the property in this case falls, see Surplus Property Administration Reg. No. 1, sec. 8301.2 (b) (2), 10 Fed. Reg. 14064; 11 Fed. Reg. 408 (1946); Executive Order No. 9689, 11 Fed. Reg. 1265 (1946); see also War Assets Administration Reg. No. 1, sec. 8301.2 (g) (2), 11 Fed. Reg. 7971 (1946).

⁴ "Care and handling" is defined by section 3 (g), 50 U. S. C. App. Supp. V, sec. 1612 (g), as including "completing, repairing, converting, rehabilitating, operating, maintaining, preserving, protecting, insuring, storing, packing, handling and transporting" surplus property.

otherwise carry out the provisions of the Act. Surplus Property Act, section 15, 50 U. S. C. App. Supp. V, 1624.

Since RFC has declared the property here involved surplus to its needs and responsibilities, it must be disposed of by War Assets Administration. While RFC still has the technical legal title, the responsibility and authority for disposing of the property and the care and handling of the property pending disposal are by the terms of the Act vested in the War Assets Administration. The court below stated (R. 40): "It does not follow of necessity that the War Assets Administration must possess the property physically in order to dispose of it any more so than a real estate broker must physically possess the home of its client in order to dispose of the home". But, the ability to deliver possession to a purchaser is indispensable to carrying out the responsibility and authority vested in War Assets for disposing of surplus property. And, even more important, the War Assets Administration must not only dispose of the property, but must administer it from the time it is declared surplus to the time it is sold. Obtaining possession of surplus property wrongfully withheld is obviously a necessary adjunct to the responsibility for the care and handling of surplus property pending its disposal. It is clear that Congress intended that the War Assets Administration should have possession of all surplus government property, since the Congressional definition of "care and handling" is all embracing and includes many functions which could not be

performed without taking possession such as “completing”, “converting”, “rehabilitating” and “operating” the property. Of direct application to the present case is the inclusion in the definition of the functions of “maintaining, preserving, protecting” the property. Being thus charged with the duty of excluding vandals, trespassers and other unauthorized persons from the premises, the War Assets Administration was obviously entitled to recover possession from the defendants. Since War Assets is an administrative agency its litigation is conducted by and in the name of the United States. Accordingly, it is submitted that this suit was properly instituted in the name of the United States.

B. *The United States may maintain the suit to assert rights arising out of the transactions of one of its wholly owned corporations.*—The decision of the court below is based upon the fact that RFC may “sue and be sued” in its own name. The court concluded that RFC is a separate and distinct entity akin to a private corporation, and therefore, that a cause of action of RFC is not a cause of action of the United States (R. 41).

But the fact that RFC might have maintained the action does not prove that the United States cannot also bring the suit. Neither the suability of the Government corporation nor its power to sue deprives that entity of its status as an agency of the United States (*Cherry Cotton Mills v. United States*, 327 U. S. 536, 539 (1946); cf. *Defense Supplies Corp. v. United States Lines Co.*, 148 F. 2d 311 (C. C. A. 2,

1945), certiorari denied 326 U. S. 746) or abridges in any degree the substantial rights of the United States. The mere fact that the form of a wholly owned corporation is employed does not mean, as the trial court seemed to think (**R.** 41), that the agency is to be treated as any private corporation and the governmental interests are to be ignored. As the Supreme Court said in the *Cherry Cotton Mills* case, *supra* (a case in which the United States upon being sued for a tax refund was permitted to recover on a counterclaim for indebtedness due RFC) (p. 539):

Its [RFC's] directors are appointed by the President and confirmed by the Senate; its activities are all aimed at accomplishing a public purpose; all of its money comes from the Government; its profits, if any, go to the Government; its losses the Government must bear. That the Congress chose to call it a corporation does not alter its characteristics so as to make it something other than what it actually is, an agency selected by Government to accomplish purely governmental purposes.

For this reason, the courts have uniformly held that in addition to the corporation's right to sue, the United States may sue in its own name on claims arising out of transactions with such corporations. *Erickson v. United States*, 264 U. S. 246 (1924) (Spruce Corporation); *United States v. Skinner & Eddy Corp.*, 35 F. 2d 889, 892 (C. C. A. 9, 1929) (Fleet Corporation); *Russell Wheel & Foundry Co. v. United States*, 31 F. 2d 826, 828 (C. C. A. 6, 1929) (same); *United States v. Czarnikow-Rionda Co.*, 40

F. 2d 214, 215–216 (C. C. A. 2, 1930), certiorari denied 282 U. S. 844 (same); *United States v. Ascher*, 49 F. Supp. 257 (S. D. Calif. 1943) (RFC); *United States v. Arthur*, 23 F. Supp. 537 (S. D. N. Y. 1937) (same); *United States v. Freeman*, 21 F. Supp. 593, 598 (D. Mass. 1937) (same); *RFC v. Graydon*, 16 F. Supp. 765 (E. D. S. C. 1936) (same); *RFC v. Krauss*, 12 F. Supp. 44 (D. N. J. 1935) (same); *United States v. Stein*, 48 F. 2d 626 (N. D. Ohio, 1921) (U. S. Housing Corporation); cf. *United States v. Walter*, 263 U. S. 15, 18 (1923) (Fleet Corporation). The same principle has been applied in other situations. Thus the property of such corporation is immune from state taxation, unless Congress specifically waives the immunity. (*Clallam County v. United States*, 263 U. S. 341 (1923); *King County, Wash. v. United States Ship. Board E. F. Corp.*, 282 Fed. 950 (C. C. A. 9, 1922); *Baltimore Nat. Bank v. Tax Comm'n*, 297 U. S. 209 (1936); *Owensboro National Bank v. Owensboro*, 173 U. S. 664, 668–669 (1899); see RFC Act, sec. 10, as amended, 15 U. S. C. Supp. V, sec. 610; 6 Fed. Reg. 2971 (1941)). Likewise, the corporation enjoys the privilege of receiving a pledge of assets from a national bank to secure deposits of its funds, the right to reduced telegraph rates and similar rights. *Inland Waterways Corp. v. Young*, 309 U. S. 517 (1940); *Emergency Fleet Corp. v. Western Union*, 275 U. S. 415 (1928); *United States Grain Corp. v. Phillips*, 261 U. S. 106 (1923).

The trial court relied heavily (R. 42) on the fact that if suit were brought by RFC it would be

subject to liability for costs if it were unsuccessful. *Reconstruction Finance Corp. v. Menihan Corp.*, 312 U. S. 81 (1941). But this argument has been specifically rejected by the Supreme Court in *Cherry Cotton Mills v. United States*, 327 U. S. 536 (1946) where the court held (pp. 539-540) that the *Menihan* and similar cases did not limit the power of the United States to assert a debt due RFC as a counterclaim. And, while this point was not specifically mentioned, the many cases cited above, pp. 12-13, holding that the United States could sue on a claim of a government corporation necessarily reject the argument.

It is submitted, therefore, that the United States was a proper party to institute this suit to recover possession of federally-owned property. This is not to say that the RFC or the RFC and the United States together could not bring a similar suit. In fact, after dismissal of the present action, another suit was filed by the United States and RFC. However, the appellee here is asserting that the present case is *res judicata* and therefore the second suit is barred. While it is not believed that this claim of *res judicata* has merit, the present appeal is prosecuted to avoid any necessity of deciding that question and especially to avoid the delay in obtaining possession which would attend litigation of the question.

CONCLUSION

The trial court erred in holding that the United States may not sue in its own name to recover possession of surplus property of a Government-owned

corporation. The right to maintain such a suit can be sustained either under the provisions of the Surplus Property Act or under the well-established principle that the United States may sue to protect its interests in claims arising out of the transactions of its wholly owned corporations. It is accordingly submitted that the order dismissing the amended complaint as to the first cause of action be reversed with instructions to proceed to the merits of the case.

Respectfully.

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A P P E N D I X

The pertinent provisions of the Surplus Property Act of October 3, 1944, 58 Stat. 765, as amended, 50 U. S. C. App. Supp. V, secs. 1611-1646, are as follows:

SEC. 3 [50 U. S. C. App. Supp. V, sec. 1612].
As used in this Act—(a) The term “Government agency” means any executive department, board, bureau, commission, or other agency in the executive branch of the Federal Government, or any corporation wholly owned (either directly or through one or more corporations) by the United States.

(b) The term “owning agency,” in the case of any property, means the executive department, the independent agency in the executive branch of the Federal Government, or the corporation (if a Government agency), having control of such property otherwise than solely as a disposal agency.

(c) The term “disposal agency” means any Government agency designated under section 10 to dispose of one or more classes of surplus property.

(d) The term “property” means any interest, owned by the United States or any Government agency, in real or personal property, of any kind, wherever located, but does not include * * *

(e) The term “surplus property” means any property which has been determined to be surplus to the needs and responsibilities of the owning agency in accordance with section 11. * * *

* * * * *

(g) The term “care and handling” includes completing, repairing, converting, rehabilitating, operating, maintaining, preserving, protect-

ing, insuring, storing, packing, handling, and transporting, and, in the case of property which is dangerous to public health or safety, destroying, or rendering innocuous, such property.

* * * * *

SEC. 5. (a) [50 U. S. C. App. Supp. V, sec. 1614 (a)]. There is hereby established in the Office of War Mobilization, and in its successor, a Surplus Property Board (hereinafter called the "Board"), which shall be composed of three members, each of whom shall be appointed by the President, by and with the advice and consent of the Senate, and shall receive compensation at the rate of \$12,000 per annum.

* * * * *

SEC. 6. (50 U. S. C. App. Supp. V, sec. 1615); The activities of the Board shall be coordinated with the programs of the armed forces of the United States in the interests of the war effort. Until peace is concluded the needs of the armed forces are hereby declared and shall remain paramount. The Board shall have general supervision and direction, as provided in this Act, over (1) the care and handling and disposition of surplus property, and (2) the transfer of surplus property between Government agencies.

* * * * *

SEC. 10. (a) [50 U. S. C. App. Supp. V, sec. 1619 (a)]. Except as provided in subsection (b) of this section, the Board shall designate one or more Government agencies to act as disposal agencies under this Act. In exercising its authority to designate disposal agencies, the Board shall assign surplus property for disposal by the fewest number of Government agencies practicable and, so far as it deems feasible, shall centralize in one disposal agency responsibility for the disposal of all property of the same type or class.

* * * * *

SEC. 11. (a) [50 U. S. C. App. Supp. V, sec. 1620]. Each owning agency shall have the duty and responsibility continuously to survey the property in its control and to determine which of such property is surplus to its needs and responsibilities.

(b) Each owning agency shall promptly report to the Board and the appropriate disposal agency all surplus property in its control which the owning agency does not dispose of under section 14.

(c) Whenever in the course of the performance of its duties under this Act, the Board has reason to believe that any owning agency has property in its control which is surplus to its needs and responsibilities and which it has not reported as such, the Board shall promptly report that fact to the Senate and House of Representatives. Each owning agency and each disposal agency shall submit to the Board (1) such information and reports with respect to surplus property in the control of the agency, in such form, and at such reasonable times, as the Board may direct; (2) such information and reports with respect to other property in the control of the agency, to such extent, and in such form, as the Board may direct and as the agency deems consistent with national security.

(d) When any surplus property is reported to any disposal agency under subsection (b) of this section, the disposal agency shall have responsibility and authority for the disposition of such property, and for the care and handling of such property pending its disposition, in accordance with regulations prescribed by the Board. Where the disposal agency is not prepared at the time of its designation under this Act to undertake the care and handling of such surplus property the Board may postpone the responsibility of the agency to assume its duty for care and handling for such period as the

Board deems necessary to permit the preparation of the agency therefor.

(e) The Board shall prescribe regulations necessary to provide, so far as practicable, for uniform and wide public notice concerning surplus property available for sale, and for uniform and adequate time intervals between notice and sale so that all interested purchasers may have a fair opportunity to buy.

* * * * *

SEC. 15. (a) [50 U. S. C. App. Supp. V. sec. 1624]. Notwithstanding the provisions of any other law but subject to the provisions of this Act, whenever any Government agency is authorized to dispose of property under this Act, then the agency may dispose of such property by sale, exchange, lease, or transfer, for cash, credit, or other property, with or without warranty, and upon such other terms and conditions, as the agency deems proper: * * *

(b) Any owning agency or disposal agency may execute such documents for the transfer of title or other interest in property or take such other action as it deems necessary or proper to transfer or dispose of property or otherwise to carry out the provisions of this Act, and, in the case of surplus property, shall do so to the extent required by the regulations of the Board.

The pertinent provisions of the Act of September 18, 1945, 59 Stat. 533, c. 368, secs. 1-2, 50 U. S. C. App. Supp. V, sec. 1614a-1614b are as follows:

That there is hereby established in the Office of War Mobilization and Reconversion a Surplus Property Administration which shall be headed by a Surplus Property Administrator. The Administrator shall be appointed by the President by and with the advice and consent of the Senate and shall receive compensation

at the rate of \$12,000 per year. The term of office of the Administrator shall be two years.

SEC. 2. (a) Effective at the time the Surplus Property Administrator first appointed under this Act qualifies and takes office, the Surplus Property Board created by section 5 of the Surplus Property Act of 1944 is abolished, all of its functions are transferred to, and shall be exercised by, the Surplus Property Administrator, and all of its personnel (except the members thereof), records, and property (including office equipment) are transferred to, and shall become, respectively, the personnel, records, and property of the Surplus Property Administration.

* * * * *

(c) All regulations, policies, determinations, authorizations, requirements, designations, and other actions of the Surplus Property Board, made, prescribed, or performed before the transfer of functions provided by subsection (a) of this section shall, except to the extent rescinded, modified, superseded, or made inapplicable by the Surplus Property Administrator, have the same effect as if such transfer had not been made; but functions vested in the Surplus Property Board by any such regulation, policy, determination, authorization, requirement, designation, or other action shall, insofar as they are to be exercised after the transfer, be considered as vested in the Surplus Property Administrator.

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The pertinent provisions of Executive Order No. 9689, 11 Fed. Reg. 1265 (1946) are as follows:

CONSOLIDATION OF SURPLUS PROPERTY FUNCTIONS

Whereas the Surplus Property Administration has now substantially completed the performance of its policy-making functions, the

War Assets Corporation is now vested with the major part of domestic surplus property disposal, and the State Department is now vested with the major part of foreign surplus property disposal; and

Whereas, after a reasonable period in which to make necessary administrative arrangements, it will be feasible and desirable to establish a War Assets Administration as a separate agency directly responsible to the President to exercise consolidated functions relating to the disposal of domestic surplus property;

Now therefore, by virtue of the authority vested in me by the Constitution and Statutes, including Title I of the First War Powers Act, 1941 (55 Stat. 838), and as President of the United States, it is hereby ordered as follows:

1. The functions of the Surplus Property Administrator and of the Surplus Property Administration are hereby transferred, except as otherwise provided herein, to the chairman of the board of directors of the War Assets Corporation, and to the War Assets Corporation, respectively, and the Surplus Property Administration shall be deemed merged into and consolidated with the War Assets Corporation.

2. All functions of the Surplus Property Administrator and the Surplus Property Administration which relate to surplus property located outside the continental United States, Hawaii, Alaska (including the Aleutian Islands), Puerto Rico, and the Virgin Islands are transferred to the Secretary of State and the Department of State, respectively.

3. Effective March 25, 1946 (a) there shall be established, in the Office for Emergency Management of the Executive Office of the President, a War Assets Administration at the head of which there shall be a War Assets Administrator, who shall be appointed by the

President by and with the advice and consent of the Senate, and who shall receive a salary at the rate of \$12,000 per annum unless the Congress shall otherwise provide, and (b) the functions of the War Assets Corporation relative to surplus property and of the Chairman of the board of directors of the War Assets Corporation relative to surplus property shall be transferred to the War Assets Administrator.

4. There shall be transferred to the agencies to which functions are transferred by this order so much as the Director of the Bureau of the Budget shall determine to relate primarily to such functions, respectively, of the records, administrative property, personnel, and funds of the Surplus Property Administration, the Office of War Mobilization and Reconversion, the Reconstruction Finance Corporation, and the War Assets Corporation. All authorizations, commitments, or other obligations incurred as a disposal agency by the Reconstruction Finance Corporation or by the War Assets Corporation under the Surplus Property Act of 1944 shall be transferred to the War Assets Administration upon its establishment.

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