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REPORT TO THE SUBCOMMITTEE  
ON CONSERVATION  
AND NATURAL RESOURCES  
COMMITTEE ON  
GOVERNMENT OPERATIONS  
HOUSE OF REPRESENTATIVES

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Review Of Proposed Changes To The  
Colorado Plateau  
Pulpwood Sale Contract B-173590

Forest Service  
Department of Agriculture

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BY THE COMPTROLLER GENERAL  
OF THE UNITED STATES

~~700937~~ 096690

JAN. 25, 1972



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

B-173590

Dear Mr. Chairman:

Reference is made to your letter of June 29, 1971, in which you expressed concern that proposed changes to the Colorado Plateau pulpwood sale contract between the Forest Service, Department of Agriculture, and Southwest Forest Industries, Inc. (contractor), would (1) vastly expand the cutting of trees which have a higher stumpage value when used for sawlogs or poles rather than for pulpwood, (2) cause severe environmental problems, and (3) result in monetary loss to the Government. You asked that we determine whether or not your concerns were well based.

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We reviewed the documents you enclosed with your letter, those subsequently provided by your office, and contract files made available to us at the Forest Service headquarters office. We also interviewed Forest Service headquarters officials who were familiar with the contract and who had participated in negotiations with the contractor to modify it.

Our review showed that, had the proposed changes been adopted, increases in tree cutting and in the environmental impact on parts of the sale area and monetary loss to the Government could have resulted. The changes were not adopted, however, and therefore the extent of the damage to the area and the monetary loss which these changes might have caused could not be determined.

Forest Service headquarters officials advised us in November 1971 that (1) the Forest Service had discontinued its efforts to modify the contract, (2) the operations under the contract had been and would continue to be in accordance with the Forest Service's interpretation of the contract terms, and (3) the contractor could seek changes to the contract or the operations under the contract by appealing the Forest Service's actions to the Secretary of Agriculture or the Board of Forest Appeals or by initiating court action.

The results of our review are presented in detail below.

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In December 1959 the Forest Service entered into a 30-year contract with Southwest Lumber Mills, Inc., (now Southwest Forest Industries, Inc.), for a pulpwood sale covering approximately 1.6 million acres within six national forests--Kaibab, Coconino, Sitgreaves, Apache, Tonto, and Cibola--in the Colorado Plateau area. The purpose of this sale was to provide, for the first time in the Colorado Plateau area, a market for trees which had little or no value as sawlogs or poles. The cutting of such trees was expected to contribute to the overall growth and health of the larger trees in the timber stands in the area.<sup>1</sup>

Prior to the sale the Forest Service had advertised publicly that the sale area contained an estimated volume of 6 million cords of pulpwood. According to Forest Service inventory records, 56 percent of the volume to be cut during the first 20 years would come from trees 12 inches or larger in diameter.<sup>2</sup>

The negotiations between the Forest Service and the contractor to modify the original contract involved an attempt to clarify language in section 3b of the contract pertaining to the designation of trees for cutting as pulp. Section 3b provides, in part, that:

"Live or dead trees will be designated for cutting which are merchantable for pulpwood but which do not have a higher stumpage value for sawlogs or poles \*\*\*."

The contract did not limit the size of trees that could be marked for cutting. During the first several years of

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<sup>1</sup>The growth and health of trees in a timber stand can be improved by harvesting selected trees within the stand. This type of harvesting is referred to as commercial thinning.

<sup>2</sup>The diameter of a tree is measured at 4.5 feet above ground level.

operation under the contract, trees having diameters of 12 to 16<sup>(1)</sup> inches had little value as sawlogs or poles and were marked for cutting in accordance with pulpwood marking guides established by the Forest Service. Unprecedented increases in lumber and plywood price levels, which started in mid-1968, however, caused the Forest Service to become concerned about the marking of trees in accordance with section 3b of the contract.

The Regional Forester at the Forest Service's Southwestern Region, who is responsible for administering the contract, considered the portion of section 3b, quoted previously, to be protecting the Government if timber in the contract area became more valuable for sawlogs or poles than for pulpwood. He interpreted the contract to allow for (1) periodic re-determinations of the sawlog, pole, and pulpwood values of the trees in the sale area and (2) any necessary periodic adjustments to the pulpwood marking guides to reflect changes in sawlog or pole values compared with pulpwood value.

As a result, in mid-1968 when trees having diameters of 12 inches or larger were being classified as sawtimber in accordance with Forest Service inventory standards, the Regional Forester revised the pulpwood marking guides for the Colorado Plateau sale to exclude most trees having diameters of 12 to 16 inches from cutting under the contract.

The contractor took exception to the Regional Forester's interpretation of the contract and to the revised marking guides and in January 1970 appealed the matter in a letter to the Chief of the Forest Service. The contractor maintained that, as a result of applying the revised pulpwood marking guides, many areas were not able to provide the minimum 40 cords of pulpwood for each 20 acres as required by the contract and that the availability of the estimated pulpwood volume of 6 million cords thereby was jeopardized.

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<sup>1</sup>Trees having diameters over 16 inches generally were not marked because the contractor did not have facilities to process trees of this size.

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The contractor maintained also that the market value of the trees in the sale area was determined at the time of the pulpwood sale in 1959 and that the contract was not intended to provide the Forest Service with flexibility to redetermine periodically the market values during the life of the contract.

In a letter to the contractor dated March 31, 1970, the Chief stated that there was substantial agreement between the contractor and the Forest Service on the intent of the contract as to the size and nature of timber to be designated for cutting under the contract. The Chief stated also that the Forest Service did not agree that the market value of the trees when the contract was entered into necessarily would prevail during the life of the contract. The Chief suggested that section 3b of the contract be rewritten to more clearly express the intent of the contract. During the next 6 months, the Forest Service and the contractor jointly worked on drafting mutually acceptable language which would clarify section 3b of the contract.

The Forest Service proposed a contract modification which would have eliminated the portion of section 3b which requires that trees having a higher stumpage value for sawlogs or poles not be designated for cutting as pulpwood. Under the proposed modification the only criteria for determining whether to designate trees having diameters of 16 inches or less as pulpwood was that such trees be either surplus to the growing stock requirements or undesirable for retention until the next scheduled sawtimber cutting in the area.

The proposed modification would not have required consideration of the value of trees for sawlogs or poles when designating trees which were surplus to the growing stock requirements. The proposed modification would have

--eliminated a provision which governs the minimum volume of trees which must be left standing after thinning operations under the contract,

--added a provision for the cutting of marginal-quality sawtimber in the event that the volume of pulpwood in a given cutting area otherwise would be too small for economical harvesting operations, and

--added a provision for the cutting of certain trees having diameters in excess of 16 inches when agreed to by the contractor and the Forest Service.

The adoption of the changes proposed by the Forest Service could have had the results mentioned in your letter in that the changes would have permitted the contractor to (1) cut more trees in a given area than were originally provided for under the contract and (2) remove trees at pulpwood prices even though the trees, at the time of removal, possibly could have had a higher value for sawlogs or poles.

The Assistant Director of the Forest Service Division of Timber Management told us that the proposal to eliminate the provision governing the minimum volume of trees to be left after thinning had been made because the Forest Service had determined that the provision would not permit enough thinning in certain areas to promote maximum growth of the trees to be left standing. He told us also that the proposed changes would have allowed the Forest Service to mark for pulpwood trees which have a greater value for sawlogs or poles in order to increase the volume of pulpwood to the minimum level specified in the contract (40 cords in 20 acres) as economical for the contractor to cut.

The Assistant Director told us further that the intent of the Forest Service's proposed changes was to make the contract more operable so that the Forest Service could achieve its objective of improving the growth and health of the larger trees in the timber stands in the Colorado Plateau area. He said, however, that the original land area under the contract and the overall volume of timber to be cut would have remained the same.

The contract modification proposed by the Forest Service was signed by the contractor's representative in December

1970. The contractor's representative qualified the proposed modification by the following written statement.

"We are signing the modification with the understanding gained from the joint discussions held with your group that trees on the sale area 16.0 \*\*\* [inches in diameter] and less merchantable for pulpwood as specified in \*\*\* [the contract] is the material which was sold as pulpwood under the Colorado Plateau Sale and will be designated to provide volume specified in the contract."

The Forest Service maintained that the proposed modification specified only the type of trees and the circumstances under which they could be cut for pulpwood and that the contract, as proposed to be modified, would not commit the Forest Service to the sale of all trees 16 inches or less in diameter. Therefore the proposed modification, as qualified by the contractor, was not approved by the Forest Service.

On January 6, 1971, the Chief of the Forest Service, after receiving an allegation that a conflict of interest existed in the contract negotiations, requested the Department of Agriculture's Inspector General to investigate the matter and suspended further efforts to clarify section 3b of the contract. The Inspector General subsequently referred the matter to the Department of Justice.<sup>1</sup>

Officials of the Forest Service's Division of Timber Management told us that, during the period the contract modifications were being negotiated, trees were designated for pulpwood in accordance with the revised marking guides which the contractor had appealed. In addition, by letter dated February 11, 1971 (see enclosure), the Regional Forester formally advised the contractor of the suspended contract

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<sup>1</sup>The Assistant Inspector General for Inspections and Special Projects told us on December 10, 1971, that the Department of Justice had completed its investigation and was not planning to take legal action.

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distribution of this report unless copies are specifically requested, and then we shall make distribution only after your agreement has been obtained or public announcement has been made by you concerning the contents of this report.

We are returning under separate cover the documents forwarded with your request and those subsequently provided by your office. We trust that the foregoing information will provide some clarification regarding the matters questioned in your letter. We shall be pleased to be of further assistance in any way that we can with respect to these matters.

Sincerely yours,

Comptroller General  
of the United States

Enclosure

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*C1* The Honorable Henry S. Reuss  
Chairman, Subcommittee on  
Conservation and Natural Resources *H1502*  
Committee on Government Operations  
House of Representatives

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February 11, 1971

Region 3  
517 Gold Avenue SW  
Albuquerque, New Mexico 87101

2/28/57, 12-11-003-3991A  
(Colorado Plateau)

Mr. James B. Edens  
Chairman of the Board  
Southwest Forest Industries, Inc.  
P. O. Box 7548  
Phoenix, Arizona 85011

Dear Mr. Edens:

This will confirm the informal advice given you by our Washington Office on January 5, 1971 to the effect that we must suspend action on clarifying and reaching agreement on certain clauses in the Colorado Plateau Timber Sale Contract pending resolution of certain charges made by Mr. Leonard Netzorg of Western Forest Industries Association. Mr. Netzorg has been notified of this suspension.

The Conservation and Natural Resources Subcommittee of the House Committee on Government Operations has notified the Secretary of Agriculture of its intention to investigate the proposed action to clarify the contract. That Subcommittee has been advised that action to clarify the contract had already been suspended.

In the interim, we will need to continue timber marking on the Colorado Plateau Sale, as well as on existing and proposed sawtimber and/or pole sales within that sale area. A copy of the marking guides we intend to follow is enclosed. We consider these to be consistent with my letter of October 22, 1969 to you which contains the decision you have appealed and which we had been reconsidering.

It is and has been our understanding that the contract, specifically portions of Section 1a-5, among others, does not commit to this sale all the kinds, sizes and volumes which may qualify for cutting as pulpwood under it. It was not our intent to alter this understanding in our discussions which were aimed at clarifying the intent of the contract.

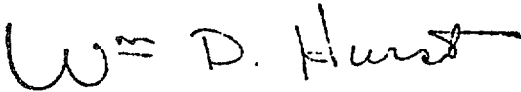
There are several provisions in this contract that have a bearing on what timber is to be designated for cutting. We recognize that these several provisions can be combined in different ways to

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result in different interpretations of how and under what conditions the timber can be marked for cutting under this and other contracts.

At this time, I cannot foresee what future actions may be needed to achieve contract clarification.

Very truly yours,

A handwritten signature in cursive script that reads "W. D. Hurst". The signature is written in dark ink and is positioned above the typed name.

WM. D. HURST  
Regional Forester

Enclosure

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Region 3

2430 Commercial Timber Sales

February 11, 1971

Colorado Plateau Sale (Marking Guides)  
2/28/71, 12-11-003-3991A

Forest Supervisors, Apache, Coconino, Kaibab, Sitgreaves  
and Tonto National Forests

Coordination between proposed sawtimber sales within the Colorado Plateau Pulp sale area will be developed in conjunction with preparation of five-year operating plans specified in Section 7h of the contract. Where necessary access is lacking, and attaining such access under the Pulpwood contract is not practical, proposed sawtimber sales should be scheduled sufficiently in advance of operations under the pulp contract to facilitate road access.

Until further notice, marking of pulpwood (outside of authorized clearcutting areas and stands of aspen) and sawtimber within the boundaries of the Colorado Plateau Pulp sale area, will be governed by the following guides:

A. Existing Sawtimber and/or Pole Sales

1. Marking on sales completely marked prior to advertisement will not be changed, except as may be specifically authorized by the terms of each applicable contract.
2. Marking on sales not completely marked prior to advertisement will be marked according to the terms of each applicable contract.

B. Proposed Sawtimber and/or Pole Sales

1. Unless otherwise justified (because of sale size, manpower constraints, etc.), proposed sawtimber and/or pole sales will be completely marked prior to advertisement.
2. Marking of timber will be in accordance with marking guides appropriate for the sale area involved. Such sawtimber and poles may include trees that are diseased, insect infested or of high risk, ranging from 11.6 inches dbh and up. Additionally, trees 16.0 inches dbh and smaller may be marked to thin a stand to a silviculturally optimum stocking level for maximizing growth in the residual stand. Trees larger than 11.6 inches dbh will not be marked if they are needed to maintain the desired level of stocking necessary to obtain the maximum growth rates.

3. On sales which are completely marked at time of advertisement, the marking will not be changed during the life of such sale (extensions excluded<sup>1/</sup>) except to make minor adjustments as may be customarily authorized by contract, such as to harvest trees unavoidably damaged by operations.

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1/ At time of extension, we will reconsider the marking and will, if necessary, adjust the marking guides.

C. Pulpwood on the Colorado Plateau Pulp Sale

1. Trees meeting the contract minimum size and other specifications for pulpwood up to and including trees 16.0 inches dbh will be marked if they are diseased, insect infested or high risk, and it is estimated they will not survive until they will be harvested as sawlogs or poles.
2. Trees meeting the contract minimum size and other specifications for pulpwood up to and including trees 16.0 inches dbh will be marked to thin stands to improve stocking levels for increasing growth, but not below the 80 and 90 square feet of basal area per acre limitations set forth in the contract.
3. Results of each scheduled rate redetermination (July 1, 1971, 1976, 1981, 1986) will be used to establish suitable guides for marking timber 11.6 inches dbh and larger for the five-year period until the next scheduled rate redetermination.

W. D. Hurst

WM. D. HURST  
Regional Forester

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