

COLD SPRINGS LUMBER COMPANY

IBLA 73-284

Decided September 10, 1973

Appeal from a decision of the District Manager, Bureau of Land Management, Casper, Wyoming, January 17, 1973, demanding payment of the balance due under a government timber sale contract.

Affirmed in part; reversed in part and remanded.

Contracts: Construction and Operation: Assignment of Claims! ! Timber Sales and Disposal

Unless approval of an assignment of a timber sale contract is given by the contracting officer, the purchaser remains liable on the contract.

Contracts: Construction and Operation: Modification of Contracts! ! Contracts: Construction and Operation: Waiver and Estoppel

The United States cannot be estopped by the acts of its agents or employees if they enter into an agreement or arrangement not otherwise permitted by law.

Contracts: Construction and Operation: Assignment of Claims! ! Contracts: Construction and Operation: Contracting Officer! ! Timber Sales and Disposals

A contracting officer is not authorized to approve an assignment of a timber sale contract unless the contract provisions regarding assignment are met.

Contracts: Disputes and Remedies: Actual Damages! ! Timber Sales and Disposals

Where a timber sale contract and applicable regulations define "timber" to include downed trees or logs capable

of being measured in board feet, as well as standing trees, and the purchaser is to receive a credit for "timber remaining on the contract area," it is error to compute this credit without including the value of such downed trees or logs not removed from the contract area.

APPEARANCES: Ray E. Hanson, President, Cold Springs Lumber Company, for appellant.

OPINION BY MRS. THOMPSON

Cold Springs Lumber Company (hereinafter referred to as "Appellant") has appealed from a decision of the District Manager, Casper, Wyoming, dated January 17, 1973, in which demand was made for \$ 4,273, as the remaining payment due to the Government under timber sale contract 49060! TSO-1 awarded July 10, 1969.

Appellant contends, in effect, that it is not liable for the amount because it has assigned its interest in the contract; or alternatively, that the government is estopped from asserting the absence of an assignment because it did not notify appellant of certain contract "deficiencies."

Neither of these contentions is correct. According to the contract, approval of an assignment by the contracting officer was necessary to release the appellant from any further liability under the contract. 1/ No approval of an assignment was given in this case.

1/ The pertinent provision reads:

"Sec. 29. Assignments.

(a) The Purchaser may not assign this contract or any interest therein without the written approval of the Authorized Officer. An assignment shall contain all the terms and conditions agreed upon by the parties thereto.

(b) The Authorized Officer will not approve any assignment involving contract performance unless the assignee: (1) is authorized to transact business in the State indicated in Sec. 1 above; (2) submits such information as is necessary to assure the Authorized Officer of his ability to fulfill the contract; and (3) furnishes a performance bond as required by Sec. 35, or obtains a commitment from the previous surety to be bound by the assignment when approved. Upon approval of an assignment by the Authorized Officer, the assignee shall be entitled to all the rights and subject to all the obligations of this contract and the assignor shall be released from any further liability under the contract."

Appellant raised the estoppel issue by referring to operations by one purported assignee and attempts to assign to another. It contends:

Had the Bureau some time between August 1970 and August 1971 notified Appellant of the very precarious matter of this operation or even if it had made known its "discrepancies" of August 1971 to the Appellant before the weather closed in that fall, the Appellant's position, while not strong, would not have been futile, for the Appellant at that time possessed the ability to at least mitigate and most probably eliminate the deficiency now claimed.

Contrary to this assertion, the record indicates that the Bureau was diligent in keeping appellant aware of the "discrepancies" during the period in question. There is no factual basis in the record for appellant's allegation that the Bureau employees misled it as to the state of its contract obligations, including the fact that no assignment had been accomplished or that it had been released from the contract. Moreover, an estoppel cannot arise against the Government unless the arrangement or agreement entered into by a government employee or agent is sanctioned or permitted by law. 43 CFR 1810.3(b); see United States v. California, 332 U.S. 19, 39-40 (1947); Beaver v. United States, 350 F.2d 4, 9 (9th Cir. 1965), cert. denied, 383 U.S. 937 (1966). Here, no assignment could be approved unless specified contract provisions were met. See the provisions set forth in footnote 1. These conditions were never met, in particular, the bond requirement. Consequently no assignment of the contract was approved. Any acts contrary to the contract which appellant contends may have purported to approve an assignment were not sanctioned by law and cannot be the basis of an estoppel. Id. Appellant was not released either by assignment or estoppel from liability under the contract and must pay damages caused by its improper performance.

Although appellant does not raise the question of the computation and amount of damages, we note that according to section 11 of the contract, appellant was to receive a credit against any amount it owed the Government to the extent of the market value or contract price, whichever is less, of "timber remaining on the contract area" when the contract was terminated. The District Office, in computing this credit, did not consider the value of trees or logs which had been cut, but not removed from the contract area, although the field report listed downed trees measurable in

board feet. 2/ This was incorrect. As defined in section 6(b) of the contract, and 43 CFR 5400.0-5(f), the word "timber" includes downed trees or logs capable of being measured in board feet, as well as standing trees. The value of such downed trees or logs should have been included in the District Office's calculation of the credit. See also BLM Manual § 5483.22. Appellant's liability must be recomputed to include this additional credit.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed in part, reversed in part and remanded.

Joan B. Thompson
Member

We concur:

Martin Ritvo
Member

Joseph W. Goss
Member

2/ The method used to compute the damages was as follows:

Total contract purchase price	\$ 25,641.00	
Less payments made on contract	<u>-7,692.30</u>	
Purchaser's liability under sec. 3(d) \$ 17,948.70 !	\$ 17,948.70	
Establishment of credit		
Standing timber on contract area	705 MBF	
Appraised value (x)	<u>\$ 21.00/MBF</u>	
Credit before administrative costs ...	14,805.00	
Less administrative costs	<u>-1,130.00</u>	
Credit allowed	\$ 13,675.00 !	<u>\$ 13,675.00</u>
owed and due Government !	\$ 4,273.70	Amount

