

YUBA RIVER LUMBER CO., INC.

IBLA 75-187

Decided February 25, 1975

Appeal from decision of the California State Office, Bureau of Land Management, denying application for a one-year extension of timber sale contract 04040-TS-3-11.

Affirmed.

1. Timber Sales and Disposals

A request for extension of a timber sale contract is properly denied where the purchaser has not shown that its delay in cutting and removal was due to causes beyond its control. A business depression is no excuse within the "beyond control" exceptions contained in the exculpatory clause of a contract.

APPEARANCES: Robert A. Gates, Vice President and General Manager, Yuba River Lumber Company, Inc.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Yuba River Lumber Company, Inc., appeals from an August 29, 1974, decision of the California State Office, Bureau of Land Management, denying Yuba's request for a one-year extension of its timber sale contract #04040-TS-3-11 beyond expiration date of November 24, 1974.

Contract TS-3-11 authorized appellant to remove an estimated 1,776 M bd ft. from lands in sec. 17, T. 12 S., R. 12 E., M.D. Mer., Nevada County, California, for a price of \$168,320.00. The contract was executed on behalf of the United States on July 25, 1973, and was to expire 16 months later on November 24, 1974.

On August 22, 1974, a notice of pending expiration of cutting and removal rights was sent by BLM to Yuba. On August 26, 1974,

Yuba requested an extension of time due to poor market conditions. On August 29, 1974, BLM by letter decision denied Yuba's request; Yuba was informed on September 27, 1974, that its request had been denied in accordance with section 9 of the contract. This appeal followed.

In its appeal appellant cited the poor state of the economy and the severe restrictions on the flow of funds, particularly in the lumber industry. Yuba stated that it was the largest employer in the community and that BLM's decision would result in curtailment of employment of some 200 people. Yuba felt these were conditions that were beyond its control and that therefore its request for extension should be granted.

The appellant has merely implied that the nation-wide deterioration of the total economy has driven the price of finished lumber down to a point where it would be highly unprofitable for the company to operate under this contract.

It is well established that a business depression is no excuse within the "beyond control" exceptions contained in the exculpatory clause of a contract. Doyle Milling Company, Inc., 6 IBLA 190 (1972); Nordic Veneers, Inc., 3 IBLA 86 (1971); Marionneaux v. Smith, 163 S. 206 (La. App. 1935); Western Alfalfa Milling Co. v. Worthington, 223 P. 218 (Wyo. 1924). Thus it has not been shown that the delay in cutting and removing the timber was due to acceptable causes beyond control of Yuba, within the ambit of the contract terms, expressed in section 9 thereof:

Extension of Time and Reappraisal. If the Purchaser shows that his delay in cutting and removal was due to causes beyond his control and without his fault or negligence, the Authorized Officer may grant an extension of time, not to exceed one year upon written request of the Purchaser. Market fluctuations are not cause for consideration of contract extensions \* \* \*. 43 CFR 5463.2 (1974).

The appellant likewise has not shown any substantive reason for exercise of the Secretary's discretionary authority contrary to the Department's policy of adhering strictly to the terms of the timber sales contracts, nor have we found any such reason. See Doyle Milling Co., Inc., *supra*; Nordic Veneers, Inc., *supra*.

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.

Douglas E. Henriques  
Administrative Judge

We concur:

Edward W. Stuebing  
Administrative Judge

Joan B. Thompson  
Administrative Judge

