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DECISION



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

FILE: B-39970

DATE: December 16, 1977

MATTER OF: Cedar River Watershed Area

DIGEST:

Easement which grants to Government use of road system within Cedar River Watershed area to transport timber cut from its lands within watershed area "or tributary thereto" permits transport of timber cut from Government lands outside watershed area as well as within that area.

A certifying officer of the Department of Agriculture, Forest Service, Seattle, Washington, requests our opinion as to the propriety of certifying for payment two vouchers in the amounts of \$2,136.58 and \$21,996.67, payable to the City of Seattle Water Department and Mountain Tree Farm, respectively, as " * * * a road use rental or toll fee * * * for hauling certain Forest Service timber over roads within the Cedar River Watershed area." Although the timber was transported by the purchasers, Seaboard Lumber and Melvin Robinson, over roads within the watershed area in which the Government had purchased a right-of-way, the source of the timber is stated to have been outside this area.

The Cedar River Watershed area is the subject of a cooperative agreement executed on May 28, 1962, between the U. S. Forest Service and the City of Seattle, Scott Paper Company, Weyerhaeuser Company and Mountain Tree Farm (a joint venture established by Scott and Weyerhaeuser to conduct logging operations in the Cedar River Watershed), for the " * * * coordinated and orderly management of the participating forest properties within the Cedar River Watershed * * *."

Pursuant to the cooperative agreement an easement was concurrently granted to the Government in an existing road system previously constructed and maintained by the other parties, and the Forest Service issued a reciprocal permit allowing the use of those portions of the road system located upon National Forest lands. In addition, a payment of \$512,700.00 was made to Scott, Weyerhaeuser and Mountain Tree Farm as the negotiated price of those rights in the road system which they relinquished.

B-189970

The easement granted to the Government includes the use of the right-of-way of the existing road system, within defined boundaries, for the purpose of:

"* * * relocating, realigning, reconstructing, improving, using and maintaining said road system and each of the several parts and segments thereof for all purposes deemed necessary or desirable in connection with the utilization, management, protection and administration of the lands of the United States and the resources thereof within the Cedar River Watershed or tributary thereto, except said purposes shall not encompass, as a matter of right, use of said roads by the public." (Emphasis added.)

The certifying officer states that the other parties to the agreement take the position that the Forest Service has no right of movement of timber outside the watershed agreement area over roads within the area, except for a very marginal amount of timber which might be a part of overlapping tracts or are portions of logical reasonable timber settings resulting from the development of this Cedar River Road System or in immediate proximity to the Cedar River Watershed. The certifying officer also states that the intent of the Forest Service when entering into the agreement in 1962 was to have access for hauling outside timber over the road system. He reports that new roads have been developed in the watershed area since 1962, and that additional easements and permits have been exchanged with the same language for access. Moreover, the other parties have transported timber from outside the watershed area over the road system within the area. Based on the intent of the Forest Service in purchasing the initial easement, the certifying officer believes that the Government should not pay any road rental fees or road tolls to the other parties. However, he acknowledges that there is nothing in the record of negotiations defining the full intent of the phrase "tributary thereto" as it appears in the easement.

Accordingly, our opinion has been requested on the following questions:

1. What right does the Forest Service have in the road system for transporting timber from outside the watershed over them?
2. Considering the nature of the appropriated moneys with which we purchased rights in the Cedar River Watershed Road System, is it legally satisfactory to require purchasers of

National Forest timber hauling timber from outside the agreement area over the road system to pay a road toll or rental either directly to Mountain Tree Farm or to the Forest Service for transfer to Mountain Tree Farm? The attached vouchers are for the latter, and have the effect of reducing the revenues to the United States from the sale of its timber.

3. If your answer to question number two is in the affirmative, must the Forest Service establish with our Cooperators a maximum amount to be collected by the Cooperators in recovering its investment costs to preclude payment of unlimited values?

4. If we may pay neither a rental nor a toll but do not have adequate rights of use established in the road system, must we determine the additional rights needed and purchase, through negotiation or condemnation, these additional rights?

The grant of right-of-way to the Government is stated to be "for all purposes deemed necessary or desirable in connection with the utilization * * * of National Forest lands and the resources thereof within the Cedar River Watershed or tributary thereto." According to the other parties to the agreement, a tributary relationship between the watershed area and lands outside the watershed area exists only where such lands are in immediate proximity to the watershed area. We believe, however, that a broader meaning may be given to the phrase "or tributary thereto." Webster's Third International Dictionary (1971) defines "tributary" to mean, among other things, being subordinate to or dependent on something else. Thus, where the watershed road system provides the most feasible means of access to commercial markets for timber resources of lands outside the watershed area, it can be said that a tributary relationship exists between such lands and the watershed area even though they may not be in immediate proximity to each other. Support for this interpretation of the easement language may be found in the Committee report on the bill appropriating funds for the original purchase of the easement. Such funds were recommended for allowance " * * * to enable reasonable and prompt solution to critical access problems where needed existing roads have not been made available to market Federally owned timber." S. Rep. No. 579, 86th Cong., 1st. Sess. 12 (1959). Moreover, continued use of the road system by the other parties for the transport of timber from outside the watershed area provides evidence that they may have similarly construed the terms of the easement and reciprocal permits in the past.

B-189970

In view of this background, the conclusion we reach is that the parties to the easement and reciprocal permits intended that the watershed road system could be utilized for the marketing of their timber, regardless of whether the timber was cut from lands within or outside the watershed area. Therefore, in response to question 1, we believe the Forest Service has the right to move its timber from outside the watershed area over the watershed road system, to the extent the Forest Service deems it necessary or desirable to do so, without payment of tolls.

Accordingly, the vouchers in question should not be paid. Also, because of our conclusion on question 1, the other questions need not be considered.


Deputy Comptroller General
of the United States