

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



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B-171728

October 12, 1972

Dear Mr. Secretary:

We refer to your letter of August 3, 1972, with enclosures, requesting our decision as "to whether, under timber sale contract provisions, all or any part of amounts claimed by an appellant can be paid when there are no compensating advantages to the Government."

The appellant, Donald W. Lyle, Inc., initially filed the claim in question by letter of September 26, 1966, to the Regional Forester in the form of a request for modification of Forest Service Timber Sale Contract No. 3-215 to include the cost of placing additional subgrade reinforcement incident to the construction of the East Canyon road through swampy areas. By letter of November 9, 1966, the Regional Forester denied the company's request, and the contractor filed a timely appeal with the Board of Forest Appeals.

In its ruling of April 12, 1968, the Board concluded the requested relief could be granted within the "bounds of the contract," and that the Board therefore had the power to adjudicate the issues in dispute. In this regard, the Board ruled that the language of paragraph 2(g) of the general terms of the contract contemplated that the contract might be modified and provided authority which could be utilized if found appropriate on consideration of the merits of appellant's claim. Subsequently, the Board recommended on November 18, 1970, that the Forest Service grant the contractor relief by adjusting stumpage rates under the contract to reflect an increase of \$4,100 in the estimated cost of the road.

By decision of March 26, 1971, the Chief, Forest Service, upheld the decision of the Regional Forester and stated that contract term 2(g) would not permit the adjustment in road cost estimates recommended by the Board.

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Subsequently, the contractor appealed the Chief's adverse decision to the Secretary of Agriculture. By decision of July 12, 1972, you upheld the Chief's decision and stated that it was in conformance with the Secretary's regulations in the Code of Federal Regulations (CFR) at 36 CFR 221.16(a) which provide that "timber sale contracts may be modified only when the modification will apply to unexecuted portions of the contract and will not be injurious to the United States." However, your decision also indicated that, in view of the Board's recommendation, the matter would be submitted to this Office for a decision as to whether all or any part of the claimed amount could be paid.

Under the appeal regulations of the Forest Service, Department of Agriculture, at 36 CFR 211.28(b), the Secretary's decision appears to be the final administrative determination provided by the regulations for the claim in question. In this connection, the Supreme Court has recently held that a federal agency's settlement of a claim under the Disputes clause is binding on the Government, that there is not another tier of federal or administrative review and that, save for fraud or bad faith, the agency's decision is "final and conclusive." S & E Contractors, Inc. v. United States, 406 U. S. 1 (1972). While the situation in the cited case involved the review by other agencies of the Government of a final "Disputes" decision in favor of the contractor, we believe the Supreme Court's ruling is applicable equally to the situation at hand which concerns a final agency decision against the contractor. See B-174899, June 1, 1972.

In view of the foregoing, it is our opinion that your decision of July 12 must be regarded as "final and conclusive" insofar as other agencies of the Government are concerned, and that it would be inappropriate for this Office to review your decision.

The files forwarded with your letter are returned, as requested.

Sincerely yours,

R.F.KELLER

Deputy Comptroller General
of the United States

The Honorable
The Secretary of Agriculture