

<b>CHARLES R. MULLER,</b>	)	<b>AGBCA No. 99-159-1</b>
	)	
Appellant	)	
	)	
<b>Representing the Appellant:</b>	)	
	)	
Charles R. Muller	)	
P. O. Box 471	)	
Coarsegold, California 93614	)	
	)	
<b>Representing the Government:</b>	)	
	)	
James L. Rosen	)	
Office of the General Counsel	)	
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San Francisco, California 94105-4511	)	

**DECISION OF THE BOARD OF CONTRACT APPEALS**

**February 15, 2000**

**Before HOURY, POLLACK, and VERGILIO, Administrative Judges.**

**Opinion for the Board by Administrative Judge POLLACK.**

This appeal arises out of a claim for \$5,600 on the Ranch SSTS Timber Sale, Contract No. 057939, between Charles R. Muller (Muller or Appellant) of Coarsegold, California, and the U. S. Department of Agriculture, Forest Service, Mariposa Ranger District, Sierra National Forest (FS or Government), Clovis, California. The contract was a salvage sale. The dispute involves Appellant's claim that it be allowed to cut an additional 50 thousand board feet (MBF) of salvage timber, which the FS refused to allow Appellant to cut.

The Board has jurisdiction over this appeal under the Contract Disputes Act (CDA), 41 U.S.C. §§ 601-613, as amended.

**FINDINGS OF FACT**

1. On January 25, 1999, the Contracting Officer (CO) issued a decision regarding Appellant's December 1, 1998 claim for \$5,600. In that claim, Appellant asserted that the FS

failed to allow it to cut an additional 50 MBF of "salvage timber," which Appellant alleged it was contractually entitled to cut.

2. On April 21, 1999, the Board received a timely appeal of the CO's decision. The basic dispute on this salvage sale is as follows. The FS set out in the contract approximately 94 MBF of marked trees, which the FS considered to be hazard trees. Thereafter, the FS determined that there were additional trees which it wanted cut as hazard trees and therefore marked those additional trees. The trees were cut by Appellant. There is no dispute over the initial trees or the added trees. What is at issue, however, is an additional 50 MBF of trees, which Appellant wanted to cut but which the FS would not allow. According to Appellant, these trees met the same criteria as the added hazard trees. Under Appellant's reading of the contract, Appellant had a right to harvest those trees at the contract price. Appellant essentially argued that the FS was required to mark and allow Appellant to cut any trees within the boundary of the sale which could qualify as salvage trees. The FS took a different position and asserted that the contract does not guarantee that every tree (even those which could qualify for salvage) would possibly qualify under the contract for harvest. Rather, as put forth by the FS, the contractor is entitled to what the contract identifies as the trees to be cut and the FS reserves the right to determine whether or not to add trees to the pre-marked number. Moreover, the FS contended that it had determined that the trees in issue did not constitute hazard trees and that is why the FS chose not to have them cut.

3. Appellant's appeal was docketed on April 24, 1999, and the Government was directed to file an Appeal File and an Answer to Appellant's Complaint. By letter of June 16, 1999, the Board wrote to the parties and confirmed that both the Answer and Appeal File had been submitted. Appellant was given time to supplement the Appeal File and the parties were directed to advise the Board as to whether each desired a hearing or wished to proceed on the record, under Board Rule 11. The letter, closed noting that the Board would hold a conference after receiving the parties' responses.

4. Under cover letter of August 3, 1999, the FS then filed what it called, "Government Brief." In the letter the Government stated that it did not desire a hearing and believed the matters involved solely a question of law and no further factual development was necessary. In essence the "Brief" set out the FS arguments which were earlier summarized above.

5. On August 26, 1999, the Board held a telephone conference with Mr. Charles Muller, Appellant, and Mr. James Rosen, counsel for the FS. The purpose was to discuss the status and to discuss the filing of the "Government's Brief." Although the filing had not been designated as a Motion for Summary Judgment, the Board indicated to the parties in the conference that the brief would be treated in that manner. The Board and parties then discussed some of the issues in the appeal and the Board set a time for Appellant to respond.

6. Thereafter, some additional correspondence was exchanged between Appellant and the Board. As a result of that correspondence, the Board sent a letter dated October 15, 1999, which among other matters, advised the Appellant that if it took no further action, the

Board would proceed to treat the matter as a withdrawal of Appellant's claim and thereupon dismiss the appeal. Appellant took no further action.

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**DISCUSSION**

Appellant has not acted to further pursue the appeal and has withdrawn its claim. Accordingly, the appeal should be dismissed with prejudice.

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**DECISION**

The appeal is dismissed with prejudice.

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**HOWARD A. POLLACK**

Administrative Judge

**Concurring:**

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**EDWARD HOURY**

Administrative Judge

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**JOSEPH A. VERGILIO**

Administrative Judge

**Issued at Washington, D. C.  
February 15, 2000.**