

<b>HOH RIVER TIMBER, INC.,</b>	)	<b>AGBCA No. 98-172-1</b>
	)	
Appellant	)	
	)	
<b>Representing the Appellant:</b>	)	
	)	
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	)	
<b>Representing the Government:</b>	)	
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**DECISION OF THE BOARD OF CONTRACT APPEALS**

**June 30, 1999**

**OPINION BY ADMINISTRATIVE JUDGE HOWARD A. POLLACK**

This appeal arises under Contract No. 075829, the Bear II Timber Sale. The sale was between the U. S. Department of Agriculture, Forest Service (FS), and Hoh River Timber, Inc., of Beaver, Washington (Hoh or Appellant), in the Mt. Baker-Snoqualmie National Forest, Skykomish Ranger District, Washington. On February 23, 1998, the Contracting Officer (CO), issued a decision on Appellant's claim of \$78,554, in which she allowed Appellant the sum of \$8,061 in full compensation for damages on the sales contract. Appellant filed a timely appeal for the balance of \$70,493. The Board docketed the appeal on May 29, 1998.

Hoh commenced cutting in the summer of 1992, but had to suspend logging on August 31, 1992, because of the presence of spotted owls. At the time of the suspension Hoh claimed that it had felled and bucked approximately 47,000 board feet of timber. It was not permitted to access the timber until July 1994 and claims that during that time, the timber suffered damage which resulted in the logs being sold at a significantly lower price. Further, Hoh

claimed compensation for approximately 130,000 board feet of timber that was designated as wildlife trees by the U. S. Department of Interior, Fish and Wildlife Service, after award of the contract. Hoh was not permitted to cut this timber. The FS agreed as to the number of board feet affected by the Fish and Wildlife action.

In her final decision, the CO denied Appellant's entitlement to the dollars claimed, noting that Appellant's claim, as presented, sought lost operating profits which was not the proper measure of relief under the contract. The CO pointed out that damages were to be properly measured under a standard rate redetermination process. The CO did identify some costs incurred by Appellant and that made up the \$8,061 allowed in the CO decision.

The parties then commenced to exchange various documents. On May 5, 1999, the Board held a telephone conference with the parties for the purpose of setting a hearing date. In that conference, the parties advised the Board that they had reached a settlement.

On June 2, 1999, the parties filed a Stipulated Dismissal requesting that the appeal be dismissed with prejudice.

### **DECISION**

In accordance with the Stipulated Dismissal filed by the parties, 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.**  
**June 30, 1999**