

Statement of  
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**United States Department of Agriculture**

before the  
Committee on Energy and Natural Resources  
United States Senate

October 19, 2000

Concerning

**Potential Liability from Timber Sale Contract Cancellations**

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to discuss the potential liability of the government resulting from timber sale contract cancellations. I am Jim Furnish, Deputy Chief of the National Forest System for the USDA – Forest Service. Accompanying me today are Richard Fitzgerald, Assistant Director of Forest Management for the Forest Service and Michael Gippert, Office of General Counsel, Department of Agriculture.

Cancellations of timber sale contracts are an infrequent occurrence. With the exception of a few high profile cases, the vast majority of timber sale contracts in the Forest Service proceed from award to termination with few problems. Since 1993, the Forest Service has issued more than 20,000 timber sale contracts with a cumulative value of \$4.1 billion. The government has canceled fewer than 100 of these contracts. The reasons for the cancellations are primarily to protect the habitat of animal, plant, and fish species listed as sensitive or by the Fish and Wildlife Service as threatened or endangered pursuant to the Endangered Species Act. Other reasons include protecting streams under the Clean Water Act, providing for old growth habitat, to minimize fragmentation, and complying with other forest plan standards and guidelines.

Prior to cancellation, attempts are made to modify the contract within the confines of the contract, the Forest's Land and Resource Management Plan, and applicable laws. The items considered include the silvicultural prescriptions, logging methods, streamside zone protection, and compliance with the NEPA process. Cancellations and suspensions of contracts are done, for instance, to meet court orders or to comply with applicable law and policy.

### Cancellation for Environmental Reasons

Beginning in 1993, the Forest Service modified or canceled timber sales in Arizona and New Mexico in order to protect the habitat of the Mexican spotted owl, a species that the Fish and Wildlife Service has listed as threatened, and the northern goshawk, a species designated as sensitive by the Forest Service. As a result of the cancellations in Arizona and New Mexico, the Forest Service compensated purchasers for their unrecovered costs and the value of replacement timber.

Claims paid to purchasers in Oregon and Washington for cancellations required to protect the habitat of the threatened northern spotted owl resulted in damages paid by the government of over \$20 million. In California, claims related to the threatened northern spotted owl resulted in damage payments of another \$12 million.

In 1995, the Forest Service began placing a new provision (C9.52 - Settlement for Environmental Cancellation) in all timber sale contracts to limit the damages paid to purchasers to out of pocket expenses when sales are canceled for environmental reasons. As a result, the government liability for damages due to cancellation for environmental reasons has been reduced. The draft final cancellation regulations will further define the compensation due a purchaser.

### Alaska Pulp Corporation:

In April 1994, the Forest Service terminated the Alaska Pulp Corporation's (APC) fifty-year timber sale contract because of APC's material breach of the contract's requirements. APC has a lawsuit pending before the United States Court of Federal Claims challenging the Forest Service's termination of the contract. Therefore, I am limited on what I can say.

### Potential Liability:

The 1996 General Accounting Office (GAO) report, *The Opportunities to Limit Future Liability for Suspended or Canceled Timber Sale Contracts*, recommended that the Secretary of Agriculture direct the Chief of the Forest Service to expeditiously release for public comment proposed regulations for canceling timber sale contracts and a revised timber sale contract.

The Forest Service is in the process of revising the timber sale contract as well as revising our timber sale cancellation regulations. Substantial work has been completed on the proposed timber sale contract, but it has not been released for public comment.

A proposed regulation for canceling timber sale contracts was published in the Federal Register in December 1996. Comments were received from eight parties. The regulation is in final clearance and should be issued late this winter.

This concludes my testimony. I would be happy to answer any questions you may have.