



April 1, 2020

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Acting State Director
Bureau of Land Management
Oregon/Washington State Office
1220 S.W. 3rd Avenue
Portland, OR 97204

John Mehlhoff
State Director
Montana/Dakotas State Office
5001 Southgate Drive
Billings, MT 59101

Karen Mouritsen
State Director
California State Office
2800 Cottage Way Suite W1623
Sacramento, CA 95825

John Ruhs
State Director
Idaho State Office
1387 South Vinnell Way
Boise, ID 83709

Re: Request for Extensions of Time for Cutting and Removal of Timber

Dear Directors Linares, Mehlhoff, Mouritsen, and Ruhs:

We are writing to request a blanket one-year extension of time for cutting and removal of timber on all awarded BLM timber sale contracts within your Offices' jurisdiction, as well as suspension of all periodic payment schedules and relief from performance bonds.

As you are aware, the COVID-19 pandemic has created significant economic disruption throughout the country, and President Trump has declared a National Emergency.¹ The forest products industry is not immune from these massive disruptions. At this time, given the dynamic and highly uncertain situation, we are requesting blanket 1-year contract extensions in order to ensure that your industry partners can manage the current situation where most states are under shelter-in-place or stay-at-home orders.² Although our industry has rightly been recognized as essential by DHS and your states,³ operations are hindered by disruptions caused by the orders as well as the need for agency and company workers to take additional safety measures. Extensions

¹ President Donald J. Trump, *Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak*, Mar. 13, 2020, <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

² See <https://www.forestresources.org/impact-of-covid-19-on-the-forest-products-industry>.

³ DHS, Christopher C. Krebs, Director, Cybersecurity and Infrastructure Security Agency, *Advisory Memorandum on Identification of Essential Critical Infrastructure Workers During Covid-19 Response*, Mar. 28, 2020; https://www.cisa.gov/sites/default/files/publications/CISA_Guidance_on_the_Essential_Critical_Infrastructure_Workforce_Version_2.0_Updated.pdf.

will give operators needed flexibility to respond to this unprecedented situation. If purchasers are not able to operate as expected, periodic payments will burn critical cash that is needed to sustain operations and the workforce. Thus we request that the extensions include waiver of periodic payments and of performance bonds.

Under 43 C.F.R. § 5473.4(a), BLM contracting officers may grant an extension up to one year “[i]f the purchaser shows that his delay in cutting or removal was due to causes beyond his control and without his fault or negligence... .” In the present situation, where purchasers may be delayed in continuing implementation due to guidance from the Centers for Disease Control or the effects of orders from local authorities, any resulting delay is beyond purchasers’ control and without their fault or negligence.

We also request the extension be without reappraisal. BLM may extend contracts without reappraisal where the delay is “imposed by the United States or any State government agency as provided by paragraph (c) of this section.” *Id.* Section 5473.4(c) provides five bases for government-imposed delay that waive reappraisal:

- (1) Additional contract requirements incorporated in contract modifications requested by the Government;
- (2) Delays necessitated by the requirements for consultation with the U.S. Fish and Wildlife Service under the Endangered Species Act;
- (3) Reviews for cultural resource values;
- (4) Court injunctions obtained by parties outside the contract; or
- (5) Closure of operations by State fire protection agencies due to fire danger.

43 C.F.R. § 5473.4(c). The government-imposed restrictions to combat Covid-19 are analogous to the circumstances identified by subsections (c)(1), (3), (4), and (5). Accordingly, extensions without reappraisal are appropriate. Moreover, reappraisals at present would not be in the public interest, as timber prices have crashed in the last several weeks so any reappraisal would result in less value to the Treasury.⁴

The requested measures are consistent with the express and implied terms of BLM’s timber sale contract. Section 29 requires purchasers to “conduct all operations in connection with this contract in compliance with the applicable provisions of Federal, State, and local safety, health, and sanitation laws, codes, and regulations and shall make it possible for the Authorized Officer to inspect such operations.” (Form 5450-3, p. 4). With a national public health emergency declared, as well as state and local declarations with implications for contractors, subcontractors, and supply chains, the measures requested are essential to enable purchasers to operate in compliance with the contract. Government contracts are commonly extended when subject to unforeseeable delays. *See, e.g., Albina Marine Iron Works v. United States*, 79 Ct. Cl. 714, 719-20 (1934). Federal timber sale contracts carry with them an implied covenant of good faith and fair dealing. *Timber Products Co. v. United States*, 103 Fed. Cl. 225, 241 (2011). This duty requires, among other things, that a party to a contract avoid “interference with or failure to

⁴ *See* Ryan Dezember, “Lumber Markets Hint at Housing Slowdown,” Wall Street Journal, Mar. 31, 2020, <https://www.wsj.com/articles/lumber-markets-hint-at-housing-slowdown-11585659600> (noting lumber futures are down 41% from February 20).

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cooperate in the other party's performance." Restatement (Second) of Contracts § 205, cmt. d (1981); *Timber Products*, 103 Fed. Cl. at 241.

We appreciate your service to the public during this difficult time and your prompt attention to this urgent request.

Sincerely,

A handwritten signature in black ink, appearing to read "Travis Joseph". The signature is written in a cursive, flowing style.

Travis Joseph
President, AFRC

CC:

William Perry Pendley
Deputy Director, Policy & Programs, Exercising the Authority of the Director Bureau of Land
Management

Casey Hammond, Deputy Assistant Secretary, Land and Minerals Management, Department of
the Interior