

WETSEL-OVIATT LUMBER CO., INC.

M E S S A G E

FROM

THE PRESIDENT OF THE UNITED STATES

RETURNING

WITHOUT APPROVAL H.R. 7132 FOR THE RELIEF OF WETSEL-OVIATT
LUMBER CO., INC., OMO RANCH, EL DORADO COUNTY, CALIF.,
AND ACCOMPANYING BILL

SEPTEMBER 2, 1964.—Referred to the Committee on the Judiciary, and ordered
to be printed with accompanying bill

To the House of Representatives:

I return herewith, without my approval, H.R. 7132, for the relief of Wetsel-Oviatt Lumber Co., Inc., Omo Ranch, El Dorado County, Calif.

The bill would direct the Secretary of the Treasury to pay to the Wetsel-Oviatt Lumber Co. the sum of \$21,299.24 in full satisfaction of the company's claim against the United States for reimbursement of losses sustained by the company under a timber sale contract between the Forest Service and the company.

The sale in question was a typical Forest Service "sale by area." The objective was to sell live and recently killed timber located in an area of about 800 acres. A preliminary estimate of the volume of timber involved was made by a sample "cruise." This estimate is used only for distributing the estimated fixed area development costs. Payment, of course, is based on the timber actually cut by the contractor.

About 87 acres of timber in the sale were marked as a sample at the time of bidding, and all bidders were given full opportunity to thoroughly examine the tract and the sample to determine for themselves whether the estimated volume was realistic. The company was in as good a position as the Forest Service to determine before

bidding the volume of timber offered for sale. In this instance, instead of the 12,800,000 board feet estimated by the Forest Service, only 6,493,000 board feet were cut. Such an underrun is not unprecedented. Nor are overruns of similar dimensions which accrue to the benefit of the purchaser. Wetzel-Oviatt Lumber Co. was thoroughly familiar with the risk involved in estimating volumes. It had been a party to other timber sales on the Eldorado National Forest, and on other national forests in California. Both overruns and underruns occurred on most of these sales.

After completion of the sale, a claim of the Wetzel-Oviatt Lumber Co. submitted to the Forest Service was disallowed. The claim was also disallowed twice by the Comptroller General, who found that the amount of timber to be cut was properly governed by the contract terms.

To the extent that the estimate of timber volume was a significant factor in performance of the contract, the company knew or should have known that responsibility for verification of the Government's estimate lay with it. I am, therefore, unable to perceive that the admittedly substantial difference between the estimated and actual volume of timber cut provides any justification for the award proposed in this bill.

To grant special relief in this case would be unfair to other contractors who have encountered underruns in the performance of similar contracts. In addition, it would be unfair to the Government and the taxpayers who would be forced to bear the losses in such cases but who receive no offsetting compensation when overruns benefiting a contractor occur.

For the foregoing reasons and because of the highly undesirable precedent which would be established, I am unable to approve H.R. 7132.

LYNDON B. JOHNSON.

THE WHITE HOUSE, *September 1, 1964.*

H.R. 7132

EIGHTY-EIGHTH CONGRESS OF THE UNITED STATES OF AMERICA AT THE SECOND SESSION BEGUN AND HELD AT THE CITY OF WASHINGTON ON TUESDAY, THE SEVENTH DAY OF JANUARY, ONE THOUSAND NINE HUNDRED AND SIXTY-FOUR

AN ACT For the relief of Wetzel-Oviatt Lumber Company, Incorporated, Omo Ranch, El Dorado County, California.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Wetzel-Oviatt Lumber Company, the sum of \$21,299.24. The payment of such sum shall be in full satisfaction of the company's claim against the United States for reimbursement of losses sustained by the company under contract numbered 12-11-005-17307, approved on October 6, 1955, entered into between the Forest Service and the company, requiring certain construction and improvements of the forest and authorizing the company to cut and remove timber from the El Dorado National Forest, such losses having occurred as a result of an error made by the Forest Service in estimating the volume of timber to be marked for cutting: *Provided,* That no part of the amount appropriated in this Act shall be

paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding \$1,000.

JOHN W. McCORMACK,
Speaker of the House of Representatives.
LEE METCALF,
Acting President pro tempore of the Senate.

[Endorsement on back of bill:]

I certify that this Act originated in the House of Representatives.

RALPH R. ROBERTS, *Clerk.*
By JOHN A. ROBERTS.

○