U.S. Department of the Interior
Office of Inspector General

AUDIT REPORT

SALVAGE TIMBER PROGRAM, BUREAU OF LAND MANAGEMENT

REPORT NO. 98-I-399
APRIL 1998

United States Department of the Interior

OFFICE OF INSPECTOR GENERAL
Washington, D.C. 20240

AUDIT REPORT

Memorandum APR 2 1998

To: Director, Bureau of Land Management

From: Robert J. Williams
Acting Inspector General

Subject: Audit Report on the Salvage Timber Program, Bureau of Land Management (No. 98-I-399)

INTRODUCTION

This report presents the results of our audit of the Bureau of Land Management's Salvage Timber Program. The objective of the audit was to determine whether the Bureau (1) conducted sales of blown-down, diseased, or fire-damaged timber in an expedient manner; (2) adequately pursued instances of timber theft; and (3) used the Forest Ecosystem Health and Recovery Fund as the Congress intended.

BACKGROUND

The Bureau of Land Management is responsible for managing, protecting, and improving 270 million acres of public land, including about 45 million acres of forest land in 11 western states and Alaska. The Bureau administers an additional 2.4 million acres of forest land in western Oregon, which include public domain lands, the revested Oregon and California Railroad grant lands, and the reconveyed Coos Bay Wagon Road grant lands.

The term "salvage timber sale" is defined by the Bureau as a timber sale designed to remove diseased or insect-infested trees; dead, damaged, or downed trees; or trees affected by fire or imminently susceptible to disease or insect attack. Such sales may also include removal of associated trees for purposes of ecosystem rehabilitation. According to Bureau officials, it is important that salvage timber is offered for sale as soon as practicable to prevent additional damage to adjacent green timber and also to prevent further deterioration of the damaged timber. Additionally, drought conditions in the western states over the past several years have significantly increased the occurrences and effects of forest wildfires and the subsequent death of trees. The drought conditions have also contributed to the increased occurrences and

severity of insect outbreaks and resultant bug-killed timber, creating the need for more salvage timber sales. As a result, damaged timber was placed as the highest priority in the Bureau's annual timber sales plans. However, the Bureau said that resources were not adequate to expeditiously market these sales and that therefore a large backlog of salvage timber projects was created.

In order to minimize the loss of merchantable volume[1] and to improve forest conditions, the Congress established the Forest Ecosystem Health and Recovery Fund on October 5, 1992. The Fiscal Year 1993 Department of the Interior and Related Agency Appropriation Act (Public Law 102-381) created this special fund in the U.S. Treasury, which was "to be derived hereafter from the Federal share of moneys received from the disposal of salvage timber prepared for sale from the lands under the jurisdiction of the Bureau of Land Management, Department of the Interior." This Act places requirements on the way the Bureau may spend these funds and also states that the formulas for the distribution of timber sales receipts specified by law are not changed. Specifically, Public Law 102-381 states in part:

> The money in this fund shall be immediately available to the Bureau of Land Management without further appropriation, for the purposes of planning and preparing salvage timber for disposal, the administration of salvage timber sales, and subsequent site preparation and reforestation. Nothing in this provision shall alter the formulas currently in existence by law for the distribution of receipts for the applicable lands and timber resources.

In regard to existing laws, the formulas for distribution of timber sales receipts (including salvage timber) from Oregon and California Railroad grant lands were established by Title II of the Oregon and California Grant Lands Act of 1937. Under the Act, timber sales proceeds were to be divided as follows: 50 percent to the Federal Government and 50 percent to the 18 western Oregon counties that contain Oregon and California Railroad grant lands.[2] The proceeds from timber sales on Coos Bay Wagon Road lands were to be divided as follows: 25 percent to the Federal Government and 75 percent to Coos and Douglas Counties. The Federal share of timber receipts from public domain lands is 96 percent, with the remaining 4 percent going to the state where the salvage sale occurred.

In response to environmental concerns, including old growth forest issues and the presence of the Northern Spotted Owl, restrictions on harvesting timber significantly decreased sales on Government lands in western Oregon. As a result, the 18 counties' shares of proceeds from timber sales on the Oregon and California Railroad grant lands and on the Coos Bay Wagon Road lands were substantially decreased. In order to stabilize the counties' revenues, appropriation language for fiscal years 1991, 1992, and 1993 included a provision for

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[1]Salvage timber of commercially acceptable quality.

[2]The following Oregon counties (there are no California counties in the Oregon and California grant lands) receive 50 percent of the timber receipts, minimum payments, or special payments: Benton, Clackamas, Columbia, Coos, Curry, Douglas, Jackson, Josephine, Klamath, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Tillamook, Washington, and Yamhill.

minimum payments to the Oregon and California counties, which would ensure that a county's payments would be equal to the annual average of the 5-year period between 1986 and 1990 (the payment could not exceed total receipts collected). In fiscal year 1993, the Congress passed the Omnibus Budget Reconciliation Act of 1993 (Public Law 103-66), which established special county payments for fiscal years 1994 through 2003 based on an annually decreasing percentage of the 5-year average of 1986 through 1990. For example, special payments to the Oregon and California counties started at $78.6 million in fiscal year 1994 and are gradually reduced to $53.6 million in fiscal year 2003. These "special payments" temporarily replaced the counties' share of actual timber receipts for the Oregon and California Railroad grant lands and the Coos Bay Wagon Road lands. For fiscal years 1999 through 2003, the amount to be paid to the counties is the greater of the special payment amount established in Public Law 103-66 or the counties' 50 percent share of timber sales proceeds.

SCOPE OF AUDIT

To accomplish our objective, our audit of the Salvage Timber Program included a review of data relative to the initiation and final disposition of timber theft cases and a review of salvage timber projects, including allocation of sales receipts and project expenditures to the Forest Ecosystem Health and Recovery Fund.

Our audit was conducted in accordance with the "Government Auditing Standards," issued by the Comptroller General of the United States. Accordingly, we included such tests of records and other auditing procedures that were considered necessary under the circumstances. We requested information from 24 Bureau offices (Appendix 1) and discussed Forest Ecosystem Health and Recovery Fund projects, expenditures, receipts, and/or policy and procedures with personnel from these offices. Each field office contacted had used the Fund to conduct salvage timber projects and had eliminated its respective backlog of salvage projects. We also reviewed law enforcement records and obtained other information from the Bureau's Law Enforcement Office in Boise, Idaho, and from Special Agents in the California and Utah State Offices.

As a part of our audit, we evaluated the system of internal controls related to salvage timber sales and the Forest Ecosystem Health and Recovery Fund to the extent we considered necessary.

We also reviewed the Department's Accountability Report for fiscal year 1996, which includes information required by the Federal Managers' Financial Integrity Act of 1982, and the Bureau's annual assurance statement to determine whether any reported weaknesses were within the objective and scope of our review. Neither the Accountability Report nor the Bureau's assurance statement addressed the Bureau's Salvage Timber Program.

PRIOR AUDIT COVERAGE

Neither the Office of Inspector General nor the General Accounting Office has issued any audit reports during the past 5 years on the Bureau's Salvage Timber Program or on the Forest Ecosystem Health and Recovery Fund.

RESULTS OF AUDIT

We found that the Bureau of Land Management conducted salvage timber sales in a timely manner and used the Forest Ecosystem Health and Recovery Fund to eliminate the backlog of salvage timber projects. Furthermore, our review disclosed that timber thefts did not appear to be a significant problem on lands administered by the Bureau. However, the Bureau may have been inappropriately depositing both the counties' and Federal shares of salvage timber sales proceeds into the Fund rather than just the Federal share specified by the Congress in Public Law 102-381. The counties' share of proceeds for Oregon and California Grants Lands was established at 50 percent of the sales receipts by the Oregon and California Grant Lands Act of 1937. Bureau financial officials said that they believed that Public Law 103-66, which provides for temporary special payments to the Oregon and California Railroad grant lands counties except if the counties' 50 percent share is greater than the special payment, eliminated the counties' shares of receipts and thereby authorized the Bureau to keep 100 percent of the proceeds from salvage timber sales. Since the U.S. Treasury has been making special payments to the counties in lieu of the counties' 50 percent share of actual receipts, we believe that the counties' shares should be deposited into the U.S. Treasury General Fund account to partially offset those special payments. As of August 31, 1997, the Bureau had deposited $5.2 million of the counties' shares of salvage timber sales receipts from fiscal years 1994 through 1997 into the Forest Ecosystem Health and Recovery Fund. Based on our review, the Bureau requested a Solicitor's opinion on this matter on May 28, 1997, in which it stated that its interpretation "of legislation [Public Law 103-66] is that the . . . salvage timber receipts are entirely the Federal Government's share during the special payment years."

The Forest Ecosystem Health and Recovery Fund has provided Bureau field offices with the additional funding necessary to expedite salvage timber sales and reduce the backlogged volume of salvage timber. Sales of salvage timber have increased from 10.4 million board feet in 1993 to nearly 39 million board feet in 1997. During the 5 years since the implementation of the Fund, the Bureau has sold over 141 million board feet of salvage timber and collected receipts of about $23.5 million. We contacted 17 Bureau field offices, and none of those field offices reported a backlog of salvage timber.

Our audit also disclosed that the number of timber thefts that occurred during fiscal years 1994 through 1996 was minimal. Data provided by the National Law Enforcement Office showed that an average of 12 timber theft cases were opened per state per year. The average loss per timber theft case was less than $1,400, based on the law enforcement officers' estimates of the value of the timber or other forest products removed. During this period, timber sales fluctuated between about $75 million and $100 million per year, and the loss

from timber theft was estimated at about $100,000 per year.[3] Furthermore, according to the Bureau's Uniform Crime Reporting System, about 50 percent of the timber theft cases reported were cleared by arrest or other means. While law enforcement officials did not provide statistics on the dollar value of cases cleared, they stated that they had had greater success working and obtaining prosecutions on the larger dollar cases. They also stated that many of the smaller cases involved theft of firewood or unauthorized tree cutting while roads were being constructed and that it was often difficult to obtain prosecution on these cases. Consequently, after reviewing all of the information provided by the Bureau, we concluded that timber thefts did not appear to be a significant problem on Bureau-managed lands.

The Bureau's accounting records showed that during fiscal years 1994 and 1995 (through June 1995), the Oregon and California counties' shares of salvage timber receipts were deposited into the U.S. Treasury General Fund. However, on June 16, 1995, Bureau officials decided that the counties' share could be deposited into the Bureau's Forest Ecosystem Health and Recovery Fund rather than the U.S. Treasury General Fund.

We reviewed correspondence which indicated that during 1995 and 1996, Bureau officials discussed this matter with the Department's Budget Office, which requested a Solicitor's opinion as to whether the Bureau could transfer 100 percent of salvage timber receipts into the Fund. The Solicitor did not provide a written opinion. However, correspondence dated April 20, 1995, between the Department's Budget Office and the Bureau stated:

> The Solicitor's office thought that such an interpretation was reasonable, but suggested that BLM/DOI [Bureau of Land Management/Department of the Interior] consult with OMB [Office of Management and Budget] and the relevant Congressional committees before beginning to handle the receipts in that way.

Correspondence from the Department's Budget Office also stated that the Bureau had not consulted with either the Office of Management and Budget or the relevant Congressional committees. Nevertheless, on June 16, 1995, the Bureau's Chief, Division of Finance, authorized the transfer of 100 percent of salvage timber receipts to the Fund for fiscal years 1994 through 2003. The memorandum authorizing the transfers indicated that the Solicitor had provided verbal assurance that the Bureau's interpretation of the law was reasonable.

The Congress initially appropriated $1 million for the Forest Ecosystem Health and Recovery Fund. For fiscal years 1993 to 1997 (through July 31, 1997), salvage timber sales receipts of $23.5 million had been deposited into the Fund. The Oregon and California and Coos Bay Wagon Road counties' shares of receipts deposited into the Fund totaled about $5.2 million for fiscal years 1993 to 1997 (through August 31, 1997). Because the Bureau deposited all salvage timber sales receipts into the Fund, the U.S. Treasury did not receive any revenue from the sale of salvage timber, but it pays the counties a share of those receipts (Public Law

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[3]Total estimated timber thefts for calendar years 1994, 1995, and 1996 minus the cases cleared by arrest or other means.

103-66) through an appropriation based on the average sales receipts from fiscal years 1986 through 1990.

Public Law 102-381 authorized the Bureau to transfer only the Federal share of salvage timber receipts to the Forest Ecosystem Health and Recovery Fund (which was 50 percent of the sales receipts from Oregon and California lands and 25 percent from Coos Bay Wagon Road lands). Without specific authorization to deposit 100 percent of the salvage timber receipts into the Fund, we believe that the $5.2 million counties' share, which is 50 percent of the salvage timber sales proceeds from Oregon and California Railroad grant lands (about $5,150,000) and 75 percent of the salvage timber sales proceeds from Coos Bay Wagon Road lands (about $50,000), should be deposited into the General Fund of the U.S. Treasury.

During our exit conference, we recommended that the Bureau of Land Management obtain a formal written opinion from the Solicitor's Office as to whether the Bureau can retain 100 percent of the salvage timber sales receipts. The Bureau agreed, and on May 28, 1997, the Director of the Bureau requested a Solicitor's opinion on the issue of whether and/or how much of the counties' share of salvage timber receipts should be deposited into the Forest Ecosystem Health and Recovery Fund.

Conclusion

On January 29, 1998, the Deputy Associate Solicitor, Division of Law, Office of the Solicitor, responded to the Bureau's request for an opinion (see Appendix 2) on the Bureau's retention of 100 percent of the salvage timber receipts. The Solicitor's opinion stated:

> Although there is clearly ambiguity about how "Federal share" should be interpreted, we believe the structure for payment of the "special payment amount" in OBRA 93 [the 1993 Omnibus Budget Reconciliation Act] creates a sound basis for concluding that the BLM's [Bureau of Land Management's] practice is correct.
>
> We conclude that through FY [fiscal year] 2003, in any year when the payments to the counties are made from a General Fund appropriation under OBRA 93 [1993 Omnibus Budget Reconciliation Act), all salvage timber fee receipts will be retained by the Federal government and deposited to the FEHRF [Forest Ecosystem Health and Recovery Fund]. Between FY 1999 and 2003, if the payments are made from timber fee receipts under the pre-OBRA 93 formula, only the portion of such receipts retained by the Federal government should be deposited to the FEHRF.

Based on this opinion, we are not making any recommendations on this matter.

Other Matters

During our survey, we noted inconsistencies in the way the Bureau's forestry program managers interpreted guidance relative to Forest Ecosystem Health and Recovery Fund expenditures and deposits. Although these instances were not systemic, we believe that they should be corrected.

Forest Ecosystem Health and Recovery Fund Expenditures. Regarding expenditures of the Forest Ecosystem Health and Recovery Fund (Subactivity 5900), the Bureau's fiscal year 1996 Fund Coding Handbook states:

> [The Forest Ecosystem Health and Recovery Fund] includes all costs associated with the salvage of dead and dying timber on forest and woodland ecosystems on Public Domain Lands and on Oregon and California Railroad grant lands and Coos Bay Wagon Road lands in western Oregon. [It] includes maintenance and enhancement of the forest and woodlands ecosystems effected by fire, disease, insects etc. It includes only activities related to the sale of salvage timber and the subsequent site preparation, reforestation and maintenance of these sites. No program oversight or administrative costs should be coded to this account. [Emphasis added.]

We believe that some expenditures which were charged to the Fund should have been charged to the Bureau's appropriated funds budgeted for the forestry program as follows:

- In 1996, the Oregon, Idaho, and California State Offices charged $191,405, $78,645, and $78, respectively, to the Fund for allocation of state office overhead, while the Alaska, Arizona, Montana, New Mexico, and Wyoming State Offices did not charge the Fund for overhead. In our opinion, charging overhead costs to the Fund directly conflicts with the Handbook instructions that state, "No program oversight or administrative costs should be coded to this account."

- The Arizona Strip District Office is spending an estimated $3.5 million of Fund money on a research project to restore a ponderosa pine ecosystem to pre-European settlement conditions. The project is being designed by a university and basically involves the following: removing young trees, leaving the old growth trees, burning the underbrush, and seeding grasses. In our opinion, the use of the Fund for this project is not consistent with provisions of the Fund Coding Handbook because the area has not been affected by fire, disease, or insects. In addition, this project does not appear to meet the definition of salvage timber provided in Bureau Instruction Memorandum No. 95-132. Specifically, the memorandum states:

> The term "salvage timber sale" is defined as a timber sale designed to remove diseased or insect-infested trees; dead, damaged or downed trees; or trees affected by fire or imminently susceptible to disease or insect attack. Such sales may also include removal of associated trees for purposes of ecosystem rehabilitation.

Since this project does not appear to meet Bureau requirements, we believe that it should be subject to the Bureau's budget process and funded with appropriated forestry funds.

Forest Ecosystem Health and Recovery Fund Deposits. Our review of deposits made to the Fund (Subactivity 5900) during fiscal years 1995, 1996, and 1997 disclosed that the Craig, Colorado, and the Worland and Rawlins, Wyoming, field offices posted firewood and fencepost sales receipts to the Fund. During the Bureau's 1996 Alternative Management Control Review of the Fund, officials of the Prineville District Office stated that they would like the authority to deposit firewood permit receipts into the Fund. We believe that the Bureau should establish a policy as to whether the estimated $200,000 per year in firewood and fencepost receipts from the public domain lands should be retained by the Bureau in the Forest Ecosystem Health and Recovery Fund or deposited into the U.S. Treasury General Fund.

During the summer of 1996, an interagency review team concluded that considerable variation existed in the types of timber sales identified by field offices as meeting the definition of salvage timber sales, ranging from sales of mostly dead trees to sales of mostly live trees. The team, in its final report, stated that the broad definition of salvage timber was a significant factor contributing to this situation. On October 8, 1996, the interagency team issued a report which recommended that the Bureau and the U.S. Forest Service develop a common definition of salvage timber which is within the limits of their underlying legislative authorities. A March 4,1997, followup action plan developed by the interagency team recommended a legislative proposal to address this issue. This proposal had not been submitted to the Congress as of September 1, 1997. We believe that the Bureau of Land Management should review these matters to ensure that the Forest Ecosystem Health and Recovery Fund is administered effectively and efficiently.

Although the report did not contain any recommendations, the Director, Bureau of Land Management, in a March 31, 1998, response to the preliminary final report (Appendix 3), stated that because of our report, "Several items were brought to BLM's [Bureau of Land Management's] attention which will strengthen the integrity of the program."

The legislation, as amended, creating the Office of Inspector General requires semiannual reporting to the Congress on all audit reports issued, actions taken to implement audit recommendations, and identification of each significant recommendation on which corrective action has not been taken.

We appreciate the assistance of Bureau personnel in the conduct of our audit.

OFFICES CONTACTED OR VISITED

OFFICES CONTACTED OR VISITED	LOCATION
National Offices	
Bureau of Land Management Budget Office	Washington D.C.
Bureau of Land Management Finance Office	Washington D.C.
Forest Ecosystem Health and Recovery Fund Program Coordinator	Boise, Idaho
Forestry Program Office	Washington, D.C.
National Business Center*	Lakewood, Colorado
National Law Enforcement Office	Boise, Idaho
Office of the Solicitor	Washington, D.C.
Arizona	
Arizona State Office	Phoenix, Arizona
Arizona Strip District*	St. George, Utah
California	
Eagle Lake Resource Area Office	Susanville, California
Folsom Resource Area	Folsom, California
Colorado	
Kremmling Resource Area	Kremmling, Colorado
Royal Gorge Resource Area Office	Canon City, Colorado
Idaho	
Idaho State Office	Boise, Idaho
Upper Columbia/Salmon Clearwater Districts	Coeur d'Alene, Idaho
Montana	
Butte District Office	Butte, Montana
Oregon	
Oregon State Office	Portland, Oregon
Coos Bay District Office	North Bend, Oregon
Eugene District Office	Eugene, Oregon
Klamath Falls Resource Area	Klamath Falls, Oregon
Medford District Office	Medford, Oregon
Roseburg District Office	Roseburg, Oregon
Wyoming	
Worland District Office	Worland, Wyoming
Rawlins District office	Rawlins, Wyoming

* Offices visited.

United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

JAN 28 1998

Memorandum

To: Director, Bureau of Land Management

From: Deputy Associate Solicitor - Division of General Law

Subject: Federal Share of Salvage Timber Receipts

In a memorandum of May 28, 1997 regarding the handling of salvage timber receipts from timber sales in Western Oregon from Oregon and California (O&C) and Coos Bay Wagon Road (CBWR) grant lands, the Bureau of Land Management (BLM) requested an opinion on whether BLM has been correct in depositing all salvage timber receipts from O&C and CBWR lands to the Forest Ecosystem Health and Recovery Fund (FEHRF). BLM has interpreted the statutory language establishing the FEHRF and the Omnibus Budget Reconciliation Act of 1993 as permitting this treatment of salvage timber receipts. The Office of Inspector General, in its auditing of BLM's salvage timber program, has questioned this interpretation. We find that BLM's interpretation of these laws is reasonable and therefore conclude BLM's treatment of these funds has been correct.

Background

Prior to fiscal year 1994, in accordance with statutes enacted in 1937 and 1939,[1] (1937 and 1939 statutes), 18 counties in Western Oregon (collectively, the counties) received as the result of timber sales on O&C and CBWR grant lands in the counties a share of timber harvest stumpage fee receipts through a permanent indefinite appropriation of these fee receipts. These fee receipts included stumpage fees from both so-called "green" or

[1] Title II of the Act of August 28, 1937, 50 Stat. 875, chapter 876; 43 U.S.C. 1181f, and the Act of May 24, 1939, 53 Stat. 753, chapter 144; 43 U.S.C. 1181f-1 et seq.

healthy timber, and "salvage" timber; i.e., timber that has been damaged by fire, insects, or disease.

Under the 1937 and 1939 statutes, 50 percent of timber receipts from O&C grant lands were paid to O&C counties, and 75 percent of timber receipts from CBWR grant lands were paid to CBWR counties. The remaining receipts were deposited in the General Fund of the United States Treasury (Treasury). In both fiscal years 1992 and 1993, Congress appropriated additional funds in the annual Department of the Interior (DOI) appropriation acts to supplement the counties' share of timber receipts because receipts from timber harvest stumpage fees in those years were lower than historical levels. The lower level of receipts had reduced the payments to the counties to a level below that which Congress thought was adequate.

Establishment of Forest Ecosystem Health and Recovery Fund

In the fiscal year 1993 DOI appropriation act[2], Congress established the FEHRF as a new permanent indefinite appropriation to BLM, using receipts from salvage timber sales. The appropriations language is as follows:

> "[There is] . . . established in the Treasury of the United States a special fund to be derived hereafter from the Federal share of moneys received from the disposal of salvage timber prepared for sale from the lands under the jurisdiction of the Bureau of Land Management, Department of the Interior. The money in this fund shall be immediately available to the Bureau of Land Management without further appropriation, for the purposes of planning and preparing salvage timber for disposal, the administration of salvage timber sales, and subsequent site preparation and reforestation."

This permanent indefinite appropriation supplements BLM's annual appropriations by several million dollars. At the time of the passage of the 1993 DOI appropriation act and its establishment of FEHRF, the split of timber receipts between the counties and

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[2] FY 1993 Interior Appropriation Act, Public Law 102-381, 106 Stat. 1374, 1376 (October 5, 1992).

Federal government was governed by the 1937 and 1939 statutes, which, as indicated above, provided for a 50/50 or 75/25 split of all receipts between the counties and the Federal government.

1993 Omnibus Budget Reconciliation Act

Almost a year after the creation of the FEHRF, Congress, in the 1993 Omnibus Budget Reconciliation Act[3] (OBRA 93), changed for fiscal years 1994 through 2003 the arrangement for making the payments to the counties. This new law changed both the method of determining the payment amounts and the source of funds for making the payments.

Under OBRA 93, the payment to the counties is called the "special payment amount", and the formula for determining the amount is as follows: the "special payment amount" equals the average level of receipts from fiscal years 1986 through 1990 multiplied by a declining percentage, beginning with 85 percent for fiscal year 1994, and declining by 3 percent per year through fiscal year 2003. From fiscal year 1999 through fiscal year 2003, the payments will be in accordance with the law in effect before OBRA 93, or the "special payment amount" whichever is greater. Therefore, the payments to the counties, through fiscal year 1998, and potentially in fiscal years 1999-2003, are no longer related to current levels of timber receipts, and the payments are made through an appropriation from the General Fund of the Treasury, not from timber receipts.[4]

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[3] Omnibus Budget Reconciliation Act of 1993, Public Law 103-66, 107 Stat. 682 (August 10, 1993).

[4] The original OBRA 93 language was deficient in that it did not identify a source of funds, one of the requirements of an appropriation. In an opinion dated October 5, 1994, Solicitor Leshy stated that OBRA 93 had not repealed the authority to make payments to the counties from timber receipts, but had attempted to provide an alternative source from which the payments could be made. Therefore, because of the deficiency in OBRA 93, the payment for fiscal year 1994 was made from timber receipts based on the old formula. Later, Congress amended OBRA 93 to remedy

(continued...)

Beginning in fiscal year 1995, payments to the counties have been made with appropriations from the General Fund, and BLM has deposited all "green", that is, non-salvage, timber fee receipts to the General Fund. All salvage timber fee receipts, except for a small amount from public domain lands, which were not affected by OBRA 93, have been deposited to the FEHRF[5].

Analysis

Whether BLM's practice has been correct depends upon whether the "Federal share" is now 100 percent of salvage timber fee receipts. Therefore, you asked if the definition of "Federal share" of salvage timber fee receipts refers to the percentage split that existed at the time the FEHRF was established, or whether the enactment of OBRA 93 changed the meaning of the term. Put another way, the question is whether the Congress, in creating the FEHRF (using the term "Federal share") and in enacting OBRA 93, intended to appropriate to the BLM 50 or 25 percent of salvage timber receipts, or whether Congress intended to appropriate whatever amount of receipts was not paid by the Federal government to the counties[6].

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[4](...continued)
the deficiency in the appropriations language by specifically providing that the special payment would come from the General Fund of the Treasury. Public Law 103-443, 108 Stat. 4631.

[5] BLM has been depositing 100 percent of salvage timber receipts to the FEHRF based on informal advice from the Solicitor's Office. Memorandum dated June 16, 1995, to Team Leader, Budget and Finance Team, WO-880, signed by Michael Kirby.

[6] The legislative history of the FY 1993 appropriations act is not very illuminating on the question. The Senate report states, "The receipts from timber salvage receipts are to be deposited in the 'Forest ecosystems health and recovery account' . . .", S. Rep. No. 102-345 at 12 (1993)(emphasis added), indicating that all salvage timber receipts retained by the Federal government should be deposited to the FEHRF. At the time the report was written, however, there was no choice in the
(continued...)

Although there is clearly ambiguity about how "Federal share" should be interpreted, we believe the structure for payment of the "special payment amount" in OBRA 93 creates a sound basis for concluding that BLM's practice is correct. When Congress established in OBRA 93 that the counties would receive their "special payment amount" from the General Fund of the Treasury rather than the timber receipts themselves, Congress intended that for the years covered by OBRA 93, the salvage timber receipts were not to be deposited for the benefit of the counties. Thus, under our interpretation, the counties have no "share" of the salvage timber receipts for the years covered by OBRA 93, with the result that all the receipts are the "Federal share". To conclude that the "Federal share" is not comprised of all the salvage timber receipts would place the receipts that had formerly been paid to the counties in a "limbo" status, and would negate the philosophy underlying the enactment of OBRA 93.

We do not believe that references in 43 U.S.C. § 1181f(c) and 1181f-4 (portions of the statutes creating the mechanism for paying the counties percentages of timber fee receipts) to maximum percentages of receipts available for appropriation for the administration of the O&C and CBWR programs are in any way dispositive of the question at issue. When Congress used the term "Federal share" in the FY 1993 DOI appropriations act rather than referring to 43 U.S.C. §§ 1181f and 1181f-1 or particular percentages of salvage timber fee receipts it was appropriating, it eliminated the upper limit of what the "Federal share" could be. Thus, when it enacted OBRA 93, Congress established the special payment amount for a fixed period of years and, as discussed above, increased the amounts of the "Federal share" to 100 percent.

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[6](...continued)
handling of those receipts. The pre-OBRA 93 statutory distribution was required then, and depositing all salvage timber receipts to the FEHRF was clearly not authorized. A fair reading of this language is that it was addressing the Federal share of timber receipts, which was at that time only a partial share of the receipts.

We believe this interpretation of "Federal share" to be reasonable under all the circumstances presented here. See Chevron v. Natural Resources Defense Council, 467 U.S. 837 (1984); Udall v. Tallman, 380 U.S. 1,16 (1965).

Conclusion

Based on the above analysis, we conclude that through FY 2003, in any year when the payments to the counties are made from a General Fund appropriation under OBRA 93, all salvage timber fee receipts will be retained by the Federal government and deposited to the FEHRF. Between FY 1999 and FY 2003, if the payments are made from timber fee receipts under the pre-OBRA 93 formula, only the portion of such receipts retained by the Federal government should be deposited to the FEHRF.[7]

Questions on this opinion should be directed to Robert H. Moll on 208-5216.

Timothy S. Elliott

Timothy S. Elliott

[7] OBRA 93 is silent about the period after FY 2003, with the result that the law applicable prior to OBRA 93 will be in effect. Nevertheless, the manner of handling the salvage timber receipts would remain the same, that is, the portion of salvage receipts retained by the Federal government would be deposited to the FEHRF.

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Washington, D.C. 20240

In Reply Refer To:
5000 (230)

March 30, 1998

Memorandum

To: Acting Assistant Inspector General for Audits

Through: Acting Assistant Secretary, Land and Minerals Management Piet deWitt MAR 31 1998

From: Director, Bureau of Land Management

Subject: Response to Preliminary Final Advisory Report, Salvage Timber Program, Bureau of Land Management, March 1998 (C-IN-BLM-001-97)

Following an in-depth review of the Bureau of Land Management's (BLM) salvage timber program, the report found no recommendations were necessary. The report found the Bureau (1) conducted sales of salvage timber in an expedient manner; (2) adequately controlled the theft of timber from lands administered by this agency; and (3) used the Forest Ecosystem Health and Recovery Fund as Congress intended. This satisfied the objectives of the review. The report concurred with the findings of our Solicitor's opinion regarding the deposit of receipts from the sale of salvage timber from the Oregon and California counties in western Oregon.

I appreciate the cooperative and informative nature of this review. Several items were brought to the BLM's attention which will strengthen the integrity of the program. The BLM personnel were encouraged to cooperate in every way and the report acknowledged their assistance. Although a response is not required, I take this opportunity to thank you and your employees for bringing this to a successful conclusion.

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