

**UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Oregon State Office
P.O. Box 2965
Portland, OR 97208**

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To: All District Managers
From: Deputy State Director for Resource Planning, Use and Protection
Subject: Timber Trespass Procedures - Apparent Inconsistency When Applying Oregon State Timber Trespass Law to Federal Timber

The purpose of this Information Bulletin (IB) is to clarify an apparent inconsistency in the treatment of Private and Government timber in the Timber Trespass Procedure Handbook (TTPH) 9231 - 1, Chapters III and IV.

The apparent inconsistency occurs when applying Oregon state trespass law to the passage of ownership, of Government and Private timber, following the deposition of timber across common property lines.

The TTPH Chapter III - Investigation, Page III-6, § 3. "Ownership of Trees Deposited by Wind, Water, Slides and on Mining Claims" states that:

“§ 3 a. Wind-Thrown timber Lying Across Property Lines

“When a BLM (Bureau of Land Management) tree is blown down so that part of the tree is on Government and part of it is on private land,, (*sic*) the entire tree remains the property of the Government. The Government has the right to enter the adjoining land to remove such tree but is responsible for any damage done to private land in the removal process.

“If the private landowner cuts and disposes of that portion lying on his/her land, it is not a trespass, he/she is liable for conversion. The amount the Bureau may recover is limited to the single value at the time and place of taking. The private landowner has the right to remove the tree off his land and place it back on the

Government land. A bill for collection, not a demand, is issued to collect conversion values^[1].

“3 b. Stranded Trees and Log Jams

“There are log jams, which are composed of fallen and/or uprooted trees deposited by floods or land slides that make it almost impossible to tell from what ownership the trees came from. In these jams there may be private timber on Government land and Government timber on private land. In a few cases, there is a possibility of identifying trees by matching the base of the tree with the spot where it

was uprooted.

“All fallen trees stranded on BLM lands belong to the Government, except logs that have been stranded on BLM land for less than one year and are claimed and identified as the property of another during that year. Where there is BLM land on both sides of a non-navigable stream, the entire stream bed is part of the BLM land. Where the stream forms the boundary of the BLM land, the BLM land extends to the middle of the stream.

“The Government is entitled to all fallen trees stranded on private property, which can be identified as belonging to the Government, irrespective of the length of time the trees have been stranded on the private property. (See Trespass Law)”

The TTPH Chapter VI-Trespass Law, pages 4 and 5, § 4 and § 5 state Oregon Revised Statutes (ORS) that apply to timber trespass and passage of ownership of fallen and deposited trees.

“4. Recovery of Any Part of Tree From Private Land ORS 99.050

“Any person may enter upon private property where any part of a fallen tree belonging to or under control of such person has been cast by freshets or high water, for the purpose of recovering and reclaiming the same....

“5. Effect of Failure to Remove Logs From Another’s Land ORS 99.060

“If any person fails to remove and reclaim logs, timber or any part of a fallen tree within one year after it is cast upon private property as provided in ORS 99.050, it is deemed abandoned and the title thereto rests in the person entitled to the possession of the land upon which the same is found.”

The uncertainty lies in the apparent inconsistency if one is applying ORS 99.060 to Government trees. Oregon state law specifies that logs become the property of the landowner if not claimed within one year. Government trees, however, remain the property of the Government forever, and private trees become Government property when not claimed within one year.

[1] If an adjacent landowner cuts wind-thrown Government timber from their land and places it back on BLM land, they are not liable for conversion of the timber. This paragraph will be edited for clarity in a future TTPH update.

ORS 99.050 (and ORS 99.060) is an Oregon state law and does not apply to Federal timber. The law applies only to privately owned logs and/or timber that are deposited by “high water or freshets.” It does not apply to either private or Federal wind-thrown timber.

The basis for the rule specified in TTPH Chapter III – Investigation, Page III-6, Section 3. “Ownership of Trees Deposited by Wind, Water, Slides and on Mining Claims” is the principle described in a 1947 Supreme Court Case (United States v. California, 332 U.S. 19, 40 (1947)) that states: “[t]he Government...holds its interests...in trust for all of the people, [and] is not to be deprived of those interests by the ordinary court rules designed particularly for private disputes over individually owned pieces of property; and officers who have no authority at all to dispose of Government property cannot by their conduct cause the Government to lose its valuable rights by their acquiescence, laches, or failure to act.”

Dispositions of Federal lands and property require Congressional action. Sea Hunt, Inc. v. Unidentified Shipwrecked
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Vessel or Vessels, 221 F.3d 634, 642 (4 Cir. 2000). Because there is no explicit act of Congress stating otherwise, Federal timber that is thrown by the wind onto private property remains the property of the United States.

If wind-thrown Government timber causes damages to an adjacent landowner’s property, the landowner may seek compensation for the damages under the Federal Tort Claims Act. 28, U.S.C. §§ 1346(b)(1), 2674. These damages are determined by state law. Hatahley v. United States, 351 U.S. 1073, 1081-82 (1956).

According to Oregon law, a trespass happens when “there is an intrusion upon the land of another which invades the possessor’s interest in the exclusive possession of his land.” Martin v. Union Pacific RR, 474 P.2d 739, 740 (or. 1970). This intrusion can be caused by either “intentional, negligent, reckless or ultra-hazardous conduct.” Id. In this context, “intentional” means that “the acts setting in motion the invasion were done with knowledge that a trespass would result and not that the acts were done for the specific purpose causing a trespass or injury.” Lunda v. Matthews, 613 P.2d 63, 66 (or. App. 1980). If a trespass is unintentional, liability will only be imposed where the trespass resulted from negligent conduct or ultra-hazardous activity. Loe v. Lenhardt, 362 P.2k 312, 315 (or. 1961). Since wind-thrown trees are not the result of “intentional, negligent, reckless or ultra-hazardous” activities, the chances of damage collections for damages caused by the windthrow are low. Furthermore, the adjacent landowner would have to show actual damages to recover in a trespass. Hoaglin v. Decker, 713 P.2d 674, 676 (Or. App. 1986).

If BLM becomes aware of private timber that has fallen onto BLM land, BLM should work with the adjacent landholder to resolve issues regarding that timber on a case-by-case basis. If BLM becomes aware of BLM timber that has fallen onto private property, BLM should notify the adjacent landowner prior to entering their land to recover the timber.

This IB was prepared with the consultation of Mariel Combs, Regional Solicitor’s Office, and the District Forestry Leads.

For further information, please contact David Roché, Forester, Oregon State Office at (503) 808-6015.

Districts with Unions are reminded to notify their unions of this IB and satisfy any bargaining obligations before implementation. Your servicing Human Resources Office or Labor Relations Specialist can provide you assistance in this matter.

Signed by
/s/ Nancy M. Diaz

Authenticated by
John Hamil
Staff Assistant

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