

Phil Hart: Public timber privately used

Phil Hart The Lewiston Tribune | [11 comments](#)

In 1995 I contracted with a private landowner to purchase a quantity of logs to build a house. When it came time to deliver, he could not fill the entire order. Due to springtime load limits, several other landowners were prevented from providing such logs, as they were unable to access their property with heavy equipment.

After calling nearly everyone within 50 miles, I finally talked to a landowner who had the logs I needed. But he literally talked himself out of a sale by informing me, "I would feel guilty if I didn't tell you that since you're using the logs personally, you can take them off of state land. My dad and I did it when we built his house. He had studied the law and ran it by our legislator who verified this was lawful."

I then studied the law and came to the same conclusion. Meanwhile, I talked to an elderly logger who also told me this was common practice in Idaho when he was logging. This man submitted an affidavit to that effect when I went to court over the issue.

Here is what I discovered first in the federal law:

"The Secretary of Agriculture may permit, under regulations to be prescribed by him, the use of timber and stone found upon national forests, free of charge, by bona fide settlers, miners, residents, and prospectors for minerals, for firewood, fencing, buildings, mining, prospecting, and other domestic purposes." (emphasis added) 16 U.S.C. 477.

That federal statute has been on the books since 1905. Fast forward to 1975 and we find at Title 38, Chapter 13, Section 1302 of the Idaho Code the Idaho Forest Practices Act, which states its purpose in part: "To encourage uniform forest practices implementing the policy of this chapter, and to provide a mechanism for harmonizing laws and rules relating to federal, state and private forest land. ..." We also find at section 1303 under "definitions" that "forest practice" means (a) the harvesting of forest tree species. ..."

"Harvesting" is defined to mean "a commercial activity related to the cutting or removal of forest tree species to be used as a forest product. A commercial activity does not include the cutting or removal of forest tree species by a person for his own personal use." (emphasis added)

In the 1996 edition of the Idaho Forest Practices Act, we find at IDAPA 20.02.01.07 (b) 07: "Types of Operation for Which Notice Will Not Be Required. ...(b) Noncommercial cutting and removal of forest tree species by a person for his own personal use." (emphasis added)

The federal statute allowing the "free of charge" use of timber from federal lands for personal use has been part of the U.S. Code since 1905. The Idaho Forest Practices Act

was added to the Idaho Code in 1975. If we were to "harmonize" state and federal laws, a stated goal of the Idaho Forest Practices Act, we would also allow the "free of charge" use of timber from state land by a person "for his own personal use." Given the exemptions previously quoted, this seemed reasonable to me.

When the state demanded I pay for the logs because I neglected to get a permit or sign a contract, I agreed to pay if the state could show me a sample copy of the permit or contract they were referring to. They could not, because no such documents existed. Nor had there ever been an Idaho court case that litigated these facts, nor such a case in our neighboring states. So we went to court.

In hindsight, I believe the biggest issue was the political correctness of the whole thing. One view is that these trees were created by the Creator for man's benefit, that such public trees belong to "We the People" and can be used by an individual for his own personal. The other view is that the government owns the trees and must regulate every aspect of their use.

Sixteen years later, my detractors are delighted I created a public record of the whole affair. The controversy was settled when phantom words were added to the black and white written law so that the court could justify its ruling. This was a case of legislating from the bench to the benefit of the bureaucracy. Once again the jurisdiction of the bureaucracy encroaches further, and "We the People" backup for the umpteenth time.

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