



## The Oregonian

### Court defines 'live,' halting Umatilla salvage logging

Fires - The 9th Circuit hands conservationists a victory in a battle with the U.S. Forest Service

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A federal appeals court sided with conservationists Monday in their long-running battle with the U.S. Forest Service over the language used to permit logging of old-growth trees in fire-salvage areas on the east side of the Cascades.

The 9th Circuit Court's decision halts a planned logging operation in the Umatilla National Forest but has wider implications for logging in burned or bug-infested areas of eastern Oregon and Washington.

The three-year-old legal dispute over language focused on the Forest Service's definition of the word "live."

Conservation groups say the government's mortality predictions for burned trees have frequently been overstated. Rules governing logging say old growth trees larger than 21 inches in diameter have to be dead before they are cut. Based on forestry practices, the Forest Service has been approving logging of trees it predicts are "dying."

"They're grossly over-predicting that things will die in an effort to get out and cut," said Ralph Bloemers, a Portland attorney with the Cascade Resources Advocacy Group who argued the case before a three-judge panel of the 9th Circuit last week in Seattle. "The mere existence of these old-growth trees speaks to the fact that they can handle the full range of fire, insects, wind storms or disease."

The case in question was over a proposed salvage operation in southeastern Washington. The August 2005 School fire burned 51,000 acres, including 28,000 acres of the Umatilla National Forest. A year later, the Forest Service authorized logging on 3,674 acres.

The Lands Council, the Oregon Natural Resources Council and the Hells Canyon Preservation Council sued in federal court, claiming the Forest Service violated forest management rules. They asked for an injunction to stop the logging.

The district court sided with the Forest Service, but the appeals court overturned the lower court. Monday's opinion written by Circuit Judge Susan Graber states that in determining what "live" means, the panel referred to the dictionary.

"The common understanding of the term 'live' is, quite simply, 'not dead,' " the court said. "In accord with the 'conservative definition' of a 'live tree' given by the Forest Service's own expert, no tree of the requisite size with green needles shall be harvested."

Portland attorney Scott W. Horngren argued the case on behalf of Boise Building Solutions Manufacturing and Dodge Logging Inc., which won the contract to log the trees. He said he disagreed with the way the appellate court defined a live tree.

"The court read a sentence interpreted by foresters and ran to the dictionary," he said.

He said that since 1993, the Forest Service has been looking at how bug infestations and wildfires affect tree mortality and foresters have been using that science to determine which trees are dying.

"We had all that evidence and basically the court said we don't need all that evidence," he said. "In terms of applying the practice to the definition, we think that should have applied."

While Monday's decision stops an old growth logging operation, Horngren said the court left open the door for the Forest Service to change the rules governing the cutting of old growth trees in salvage areas.

"They've given the Forest Service the road map to get out of the woods," Horngren said. "We're hopeful that the Forest Service will look at this opinion and take it as an opportunity to clarify what for the last decade has been a confusing subject."

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