

Salvage logging rules face new suit

The latest challenge claims federal regulations for determining tree mortality after fires are abused

Monday, November 08, 2004

MARK LARABEE

The U.S. Forest Service is abusing federal fire salvage logging rules to harvest living, old-growth timber where a wildfire swept through the Malheur National Forest in July 2002, according to a federal lawsuit by conservationists.

The League of Wilderness Defenders filed the suit last week in Portland. It challenges the Bush administration's rules for salvaging burned timber, claiming they are unsound and are being applied illegally.

The suit claims that in approving the High Roberts Fire Salvage, the Forest Service abused its discretion in applying rules for cutting dead and dying stands, and plans to harvest mostly healthy, old-growth trees.

The challenge continues a legal debate over determining tree mortality after fires. The Forest Service has prevailed in three lawsuits filed in Oregon this year.

Lawyers representing the conservation group plan to ask a federal judge for an injunction to temporarily halt the sale. They claim tree-marking guides being used in the Malheur, Umatilla and Wallowa-Whitman national forests to determine mortality are flawed and were erroneously applied.

The suit says the Forest Service approved timber cutting for the sensitive area without proper environmental studies. It charges the agency with ignoring the effects cutting would have on threatened bull trout and other wildlife. It asks that the rules for salvage logging -- a pillar of President Bush's Healthy Forests Initiative -- be set aside because they didn't undergo environmental analysis.

The High Roberts fire salvage was approved in September for 209 acres along the southern border of the Strawberry Mountain Wilderness. Forest managers have approved using helicopters and tractors to remove 2.6 million board feet of dead and dying trees before insects and decay ruin their value. In July 2002, fire burned through about 13,535 acres of the 388,000-acre Malheur National Forest.

Brooks Smith, forest ranger in the Prairie City Ranger District, approved the sale, which went out to bid last week. In his decision memorandum, he wrote that the project will have no effect on old-growth forest, endangered or sensitive species or critical habitat. He determined the project meets standards under salvage logging rules that allowed it to move forward with limited environmental assessment and public review.

At least three other Oregon salvage sales this year -- the Monument, Toolbox and Flagtail timber sales -- were challenged in federal court over tree mortality, said Susan M. Zike, a Forest Service lawyer. Plaintiffs in those cases questioned whether trees marked for cutting were dead or dying, and they asked a judge to issue restraining orders or injunctions to stop the sales. Though the courts didn't address whether the agency's guidelines for marking dead trees were scientifically sound, Zike said the sales were allowed to go forward based on the likelihood that the Forest Service would prevail at trial.

Scientific survey

Ralph Bloemers, an attorney for the Cascade Resources Advocacy Group, which filed the most

recent suit, said that in the High Roberts sale, less than 10 percent of the trees were "crowned" by fire. Flames mostly burned underbrush and low limbs, he said.

"Years of fire suppression in this area made the undergrowth very thick," Bloemers said. "This ground surface fire was very good because it cleared the ground and left the larger trees."

He said the lawsuit is based on a systematic scientific survey. Last month he visited the area with experts. They took photographs of large, green ponderosa pines and grand firs marked with blue spray paint, meaning they are designated for cutting. He also has pictures of new seedlings popping up, elk droppings and woodpeckers.

"Seventy percent or more are live, green, healthy trees and many of them are old growth, in excess of the diameter cap that allows them to be cut," Bloemers said. "This fire was two years ago. The forest is regenerating."

Ken Kincaid, a forester in the Prairie City Ranger District, said the Forest Service's methods to determine tree mortality look at whether there is fire damage to root systems and whether the tree is able to overcome the damage. Ground fires may burn so hot that they cook a tree's roots, he said, limiting its ability to absorb water.

"Trees that appear green could really be slowly starving to death because they were girdled by the fire," Kincaid said. "It may not die immediately. It may take a year or two for the tree to turn brown and die."

He acknowledged that the methods are not perfect and are being studied and refined. However, not everyone in the Forest Service agrees.

Retired ranger protests method

Dan Becker, who retired last month from the Prairie City Ranger District after 27 years in fire suppression, said the new methods for identifying damaged trees have not been validated. "They published a paper without peer review and called it science," he said.

Becker said he visited study plots in the Malheur forest and that in preliminary results from two years, only 3 percent of the trees marked in the "moderate severity class" have died. Of trees in the "high severity class," only 30 percent have died, Becker said.

In a letter he circulated in protest, Becker said he thought the Forest Service was heading toward stewardship. "But we are acting in the worst possible way," he wrote. "These trees, once cut, are gone forever."

Zike said the efficacy of the guidelines is high and that after years of study and development, the Forest Service experts are excited about their results. Kincaid said the Forest Service's assessments are conservative.

"We don't want to just go out there and remove green trees," he said. "We're trying to follow the rules and do the best we can to remove the trees that are going to die."

Mark Larabee: 503-294-7664; marklarabee@news.oregonian.com