



Timber Trespass

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This document may reference other documents that are not currently available online. Copies of these reference documents may be obtained by filing a public records request at <https://www.idl.idaho.gov/public-records-request>.

Agency Contact

Timber Management Bureau Chief

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Introduction

Idaho Code § 6-211 specifies that any person who cuts down or carries off any wood, trees, or timber from land belonging to the State without lawful authority is liable for trespass charges. An attorney general's memorandum of 1961 states that the statute of limitations for trespass does not apply to endowment lands.

Trespass actions need to be treated with the utmost confidentiality. All attorney/client communication is exempt from public record disclosure.

A. Trespass Etiquette

When encountering individuals in the process of trespassing on State land, department employees must be alert and exercise extreme caution. These situations are often delicate and could be dangerous. The following procedures should expedite a satisfactory solution and reduce risk.

1. Introduce yourself and display official State identification (appropriately marked vehicle or identification card).
2. Maintain a polite, professional manner as you ask questions to try and find out what is actually occurring ("Do you have a permit?" "Whose land do you think this is?", etc.). If a vehicle is present, note the license number and/or names of individuals present, etc.
3. Try to explain the State's responsibility for fairly enforcing the statute in question, and show that a solution can be reached without making anyone feel wrong or lose face. **DO NOT THREATEN**, however it is important you inform them they should stop what they are doing.

If you see that you are losing the discussion, politely state that you will look into the matter in greater detail and get back to the individual. Then leave. Do not knowingly enter into or remain in any situation where the safety of you or other State employees may be threatened.

If threatened in any way with physical harm, do not argue. Leave. Immediately notify the area supervisor, the Bureau of Forest Management (FMB), and the appropriate law enforcement agency. Make a written statement of what happened, and sign, date, and have your statement notarized for possible future use.

4. Document in your files everything you can remember about the meeting including any threatening or potentially threatening actions or behavior with which you are confronted. Notify the area supervisor and the appropriate law enforcement agency.
5. If the area supervisor or bureau chief determines that personnel under his or her supervision are being exposed to a life-threatening situation which cannot be handled, he will notify the director and request assistance.
6. Problems with a specific individual that seems to be chronic or ongoing should be discussed with the area supervisor. Perhaps a less aggressive or non-threatening approach can be taken, a compromise reached, or another person assigned to the case to diffuse the problem.

B. Field Procedures

When a trespass has been discovered, the following items need to be completed:

1. Verify the location of the property lines. Look for evidence of a line such as ribbons, paint, or any type of corner indication. A formal survey should not be completed at this point.
2. Try to determine from the evidence (tracks, skid lays, etc.) how the material was removed from the area, who took it, and where it was taken.
3. If the material removed is not in a location where it can be scaled, make an estimate of the volume removed through the measurement of stump heights and diameters and determination of probable height of trees removed. Stump diameter to DBH volumes can be obtained from the tables located in Appendix V-1.
 - a. When measuring stumps, determine average stump height and diameter. This may involve more than one measurement if the stump is oblong in shape.
 - b. When stumps are measured, they should be marked in some manner to ensure that all are measured and that no stumps are counted more than once. Numbering the stumps is preferred for future reference.
 - c. Probable heights can be estimated in one of two ways:
 - 1) Measure standing trees in the vicinity of same stump diameter.
 - 2) Use actual evidence such as limbs that have been removed from the tree, or remaining tops, to estimate the actual height of the tree where it was felled.
2. Thoroughly photograph to document the general condition of any evidence on the site.
3. Interview any individuals who may have knowledge of the trespass, and try to verify who took the material and when it was taken.
4. If any physical evidence is found on the site that may help identify the party responsible, it should be handled so as to preserve its usefulness. Begin by thoroughly describing the evidence in your report. You should also establish and document who has the evidence, when they received it, and what are they going to do with it. This "chain of custody" for the evidence may become very critical in a legal effort.

C. Trespass Report

Immediately upon discovering a trespass, a preliminary investigation should begin with full documentation including vicinity maps and reports of volumes and values. This report will be submitted on a standard Report of Inspection form, an example of which is shown in Appendix V-3. The forms should be completed as follows:

1. **Distribution Block:** Indicate the individuals to receive copies of the report by placing an "X" in the proper space.
2. **Inspection Number:** Fill in the inspection number assigned by the area.
3. **Legal Description:** Enter the legal description based on your survey of the trespass activity. The description should indicate the forty or forties in which the trespass was located and must correspond with the map of the trespass area.

4. **Date Completed:** This is the date of the trespass inspection, not necessarily the date of the report.
5. **Type of Report:** Enter "trespass," and the trespass number.
6. **Addressee:** Enter the full name and address of the party liable for the trespass.
7. **Remarks:** The text of this report should be a complete word picture of the trespass circumstances and should include:
 - a. When and how the trespass was discovered
 - b. What steps were taken to verify ownership boundaries
 - c. Who committed the trespass
 - d. How the responsible party was identified
 - e. The basis for the billing rates
 - f. A complete breakdown of volumes and charges
 - g. Any other pertinent information

The report should be dated and signed by the inspector and the reviewing authority on the supervisory area.

In addition to the report and map, any substantiating material such as the compliance or scale tickets should be included to make up the package. If letters requesting payment have been forwarded to the perpetrator of the trespass, copies should be included in the report. If payment accompanies the report, a Payment for Right-of-Way or Timber Trespass form should be attached.

The trespass map should be completed in accordance with the instructions in Section K of this manual.

D. Trespass Charges

Idaho Code 6-211 states that any person who illegally cuts down or carries off any wood, trees, or timber from State land is liable for treble damages. The Area will bill all trespasses for treble damages plus the actual administrative costs incurred while investigating the trespass. The following procedures will be used to compute these values:

1. **Stumpage Values**—In all cases, reason will prevail when determining the stumpage values. Use a stumpage determination method that will give the State reasonable payment for the material taken. The stumpage values should reflect the best estimates of costs at the time the trespass actually occurred. Below are three methods for determining stumpage values:
 - a. If the trespass occurred on an active sale area, use three (3) times the stumpage rate already established for the sale.
 - b. If the trespass did not occur on an active sale area, but an active sale is nearby to it, use three (3) times the stumpage rate already established for the nearby sale. The trespass and the active sale should be within relatively the same timeframe.

- c. If there are no active sales in the vicinity of the trespass, establish the price using the standard timber sale price worksheet and procedures as outlined in Section I of this manual, and multiplying that value by three (3).

If there is indication there may be legal challenge to the trespass, the FMB should be involved before any billing letter is sent to the trespassing party.

2. **Administrative Charges**—Administrative charges should include personnel time both in the field and office (including payrolling costs), and vehicle rental for miles driven. The amount of administrative time expended on a trespass will depend to some degree on the value of material taken. More time might normally be expended on a trespass involving 10 MBF of yellow pine peeler logs than on one involving 25 lodgepole posts.
3. **Scaling Charges**—If trespass material is scaled by a State scaler in his normal duties, the standard scaling rate will be charged. In all other cases, the scaling charge assessed will be the actual costs of administration on a particular trespass. This will include personnel time both in the field and office (including payrolling costs), and vehicle rental for miles driven.
4. **Slash Charges**—The standard slash rate will be charged for all trespass material for which slash has not previously been paid.
5. **Surveying Costs**—If the trespass was discovered in the course of a normally scheduled forest improvement project, then the cost of the survey should not be included. If however, you discover the trespass and must survey the property lines for the sole purpose of verify the trespass, and then these charges should also be included. If the trespasser is the adjacent landowner, then attempt to have them share the survey costs up front. If they decline to share in the survey costs, then include the entire cost of the survey in the administrative costs of the trespass.

E. Billing Letter

The Area will notify the individual responsible for the trespass, by letter, that we have discovered the trespass, the volumes computed, the value of the stumpage and associated other charges, and the total amount due. By State law, and as noted in C. above, the stumpage value on all trespasses will be billed for treble damages. The trespasser will be given a reasonable time period (normally two weeks) to make payments. If no payment has been received by the deadline, a second notice will be sent by certified mail following the same procedure outlined above. Notify the individual that if no payment is received by the deadline, legal action for collection will be recommended. If no response is received by the second deadline, the matter, including copies of all pertinent correspondence, will then be forwarded to the FMB with a recommendation that legal action be pursued.

If the trespassing party provides the area with a reasonable counter offer, it should be forwarded to FMB, along with the area recommendation, for consideration by the FMB and Executive Staff.

Trespasses committed by individuals or parties having no legal authorization to be operating on the adjacent ownership will be investigated as potential willful cases. A willful trespasser should be charged with a misdemeanor violation and will be liable to the State for treble damages. Normally the criminal action will be executed before the civil action. The Area Supervisor will

notify the FMB for instructions prior to initiating legal proceedings with the county prosecuting attorney.

F. Trespass Payments

Trespass payments will be forwarded to the FMB, accompanied by two copies of the Payment for Right-of-Way or Timber Trespass form. Do not forward trespass payments with the standard payment transmittal form. Instructions for completing the trespass payment transmittal form are as follows (see example in Appendix V-2):

Purpose	Indicate by an "X" in the space provided in the right-hand corner whether the payment is for right-of-way timber or trespass timber.
Compliance	If a compliance is involved, enter the number and the option in the space provided. In some cases of trespass, a compliance will not have been issued; therefore, no number will be entered.
Number	Self-explanatory. See Section A of this manual for numbering procedures.
Supervisory Area	Self-explanatory.
Date of Payment	Enter the date that the trespass payment was received at the supervisory area.
Forest Protective District	Enter the name of the FPD involved.
Payment was Received From	Enter the full name of the person or party from whom the payment was received.
Address	Enter the full mailing address of the paying party.
Legal Description	Self-explanatory.
County	Enter the county name. If a second county is involved, enter the second county in the space provided.
Endowment Fund	Enter the endowment. If a second endowment is involved, enter in the space provided.
Percent	Enter the percentage by endowment based on value.
Product Description	Enter description of the products removed.
Volume	Enter the volume removed. Be sure that the unit of volume agrees with those listed in Section A of this manual.
Stumpage Rates	Self-explanatory.
Slash Charge	Self-explanatory.
Scaling Rate	Self-explanatory.
Scaling Charge	Self-explanatory.
Totals	Total the 3 columns.

Area Supervisor	Type in the name of the supervisor.
Total Payment	This is the total of the 3 columns from above.
Signature	The person forwarding the payment signs below the name of the area supervisor.
Receipt Number	For Coeur d'Alene use only.

Ownership of the material taken in trespass transfers to the individual responsible for the trespass upon receipt of the payment of stumpage and damages. The individual should be notified that he or she has thirty (30) days to remove the material. There may be occasions when the material cannot be removed (weather or road conditions, etc.) within a 30-day period. Should this occur, the trespasser should be given a reasonable time frame in which to accomplish the removal. If the material is not removed within the specified time, the ownership transfers to the State and may be offered for sale to other parties.

G. Trespasses Committed by State Contractors

There are occasions when operators or contractors working on State land trespass onto adjacent landowners. Should this occur, the following procedure will apply.

1. Notify the landowner and the State purchaser or contractor as follows:
 - a. Inform the landowner of the trespass. Make a joint inspection, if requested. Explain that the State's purchaser is the party responsible for the trespass, and any damage claims should be presented to them.
 - b. Inform the State purchaser of the trespass and explain they are responsible for any compensation due the landowner. Provide them with the name and address of the landowner. If timber is involved, give the purchaser the estimated volumes by species of material cut.
 - c. If trespass timber has been removed and hauled as part of a State sale, notify the FMB in writing. Include the circumstances and the volume by species of material removed so it can be deducted from the State scale. A copy of this memo should be sent to the sale purchaser.
 - d. Document the trespass on a logging or project report.
2. Determine the extent of trespass and/or volumes by species if timber was removed.

To avoid potential litigation against the State, the area should see that all boundary lines are clearly identified and distinguishable in the field. Any liability incurred by the State due to a trespass by a purchaser of State timber will be covered by the sale performance bond.

References

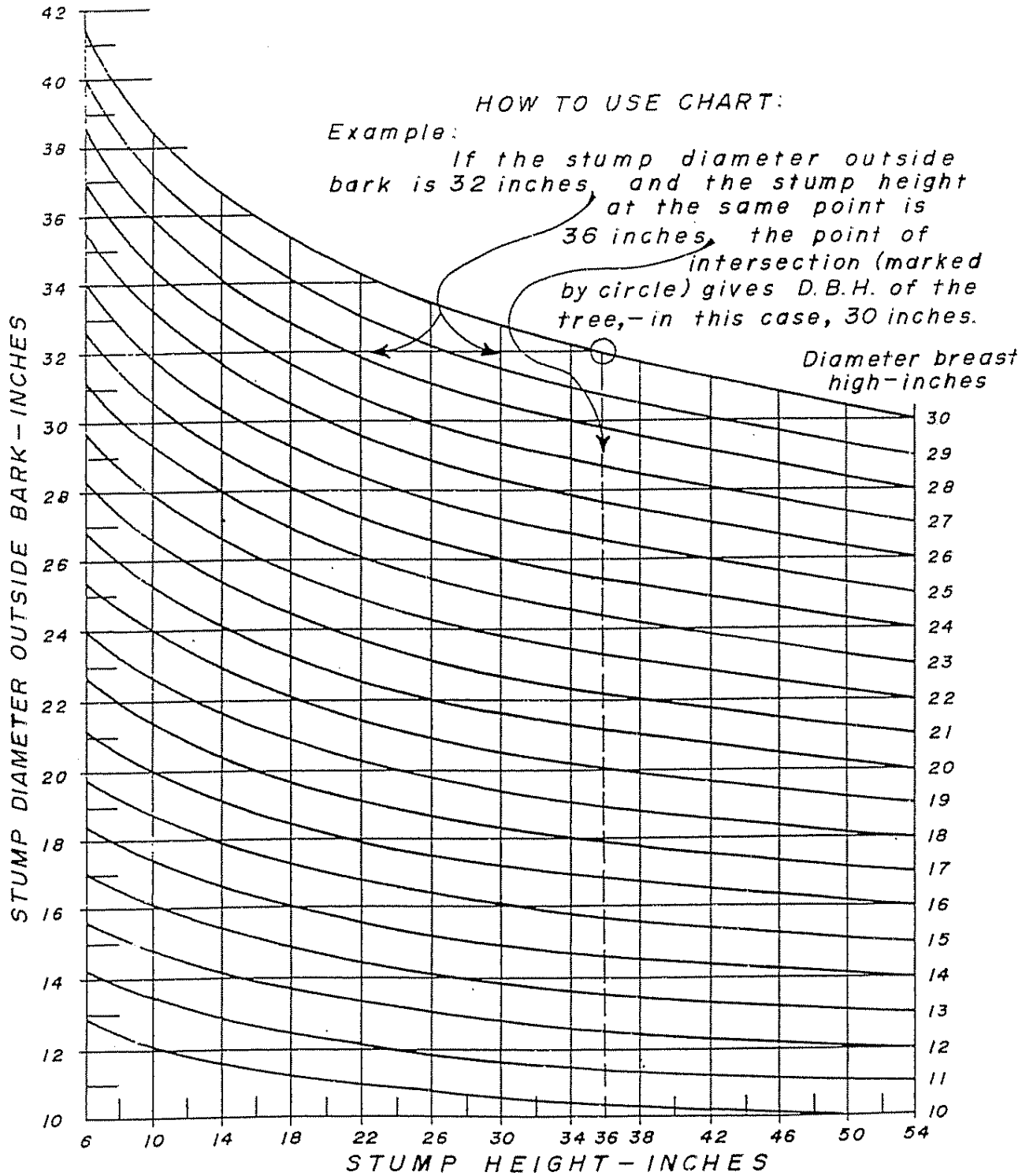
Memorandum dated October 17, 1988 (Appendix V-4)
 "Willfulness and Treble Damages of Timber Trespass"

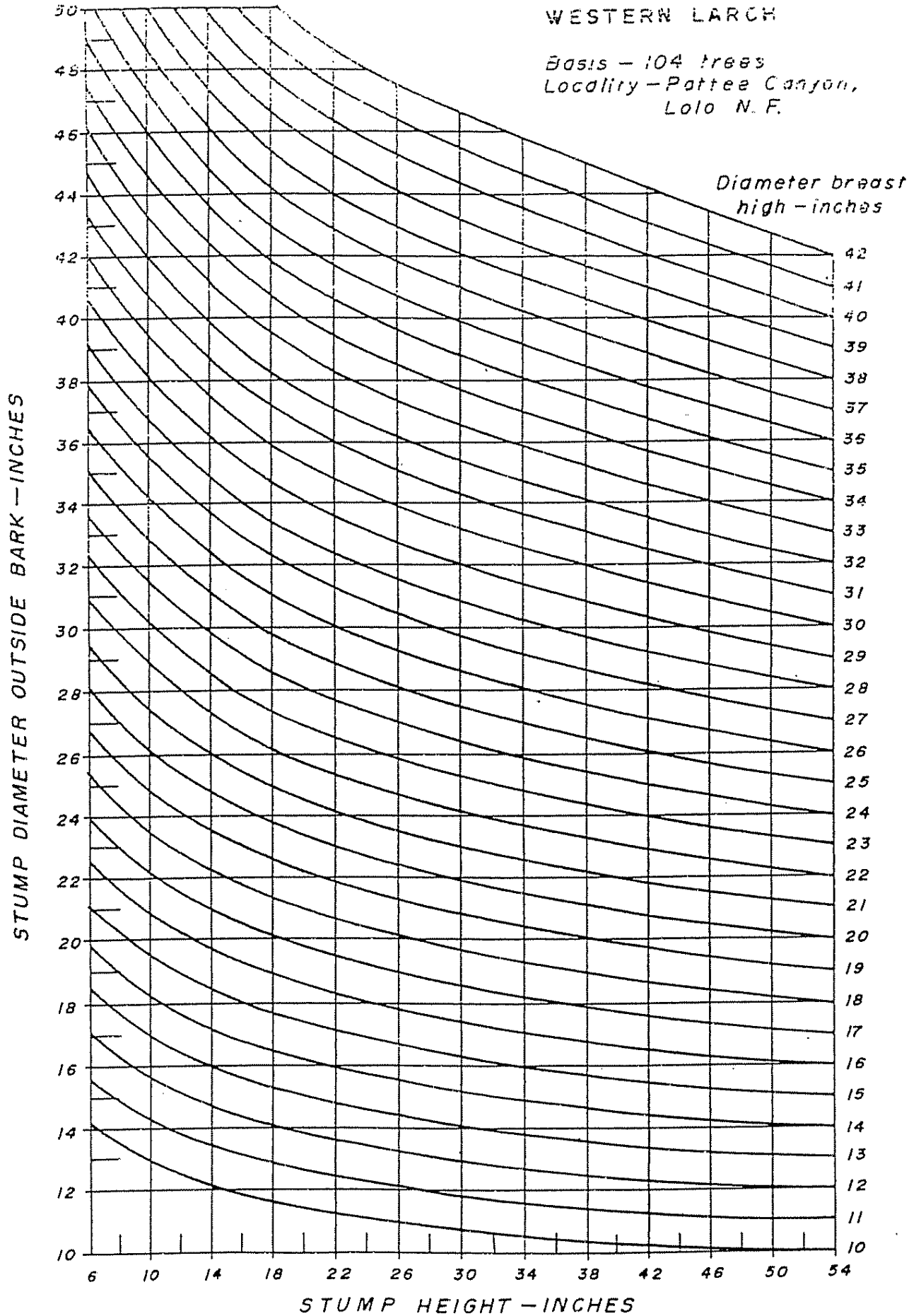
Request for Opinion dated June 21, 1961
 "Statute of Limitations, Timber Trespass State Lands"

IDAHO WHITE PINE

Basis - 138 trees

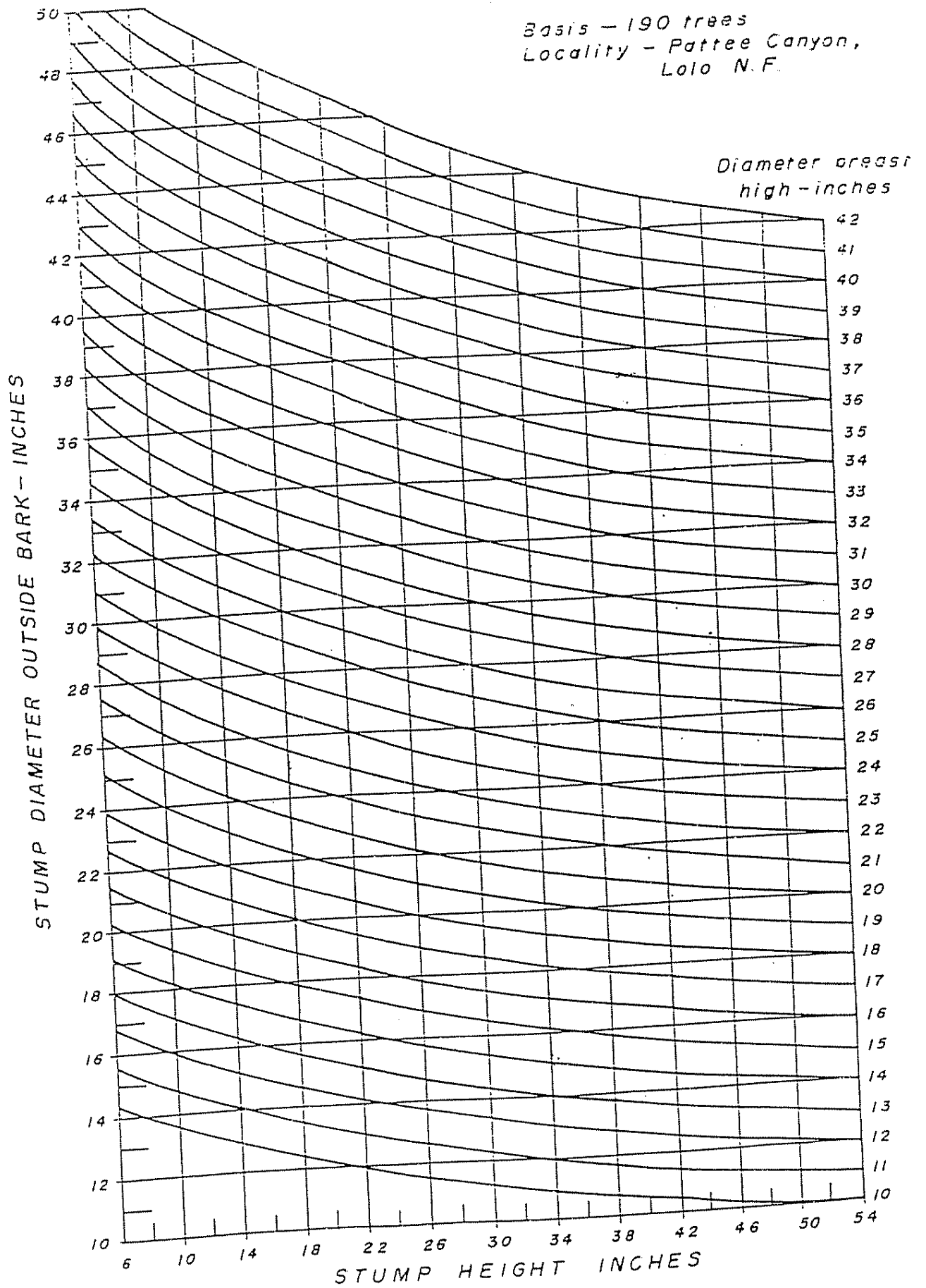
Locality - Deception Creek,
Coeur D'Alene N. F.





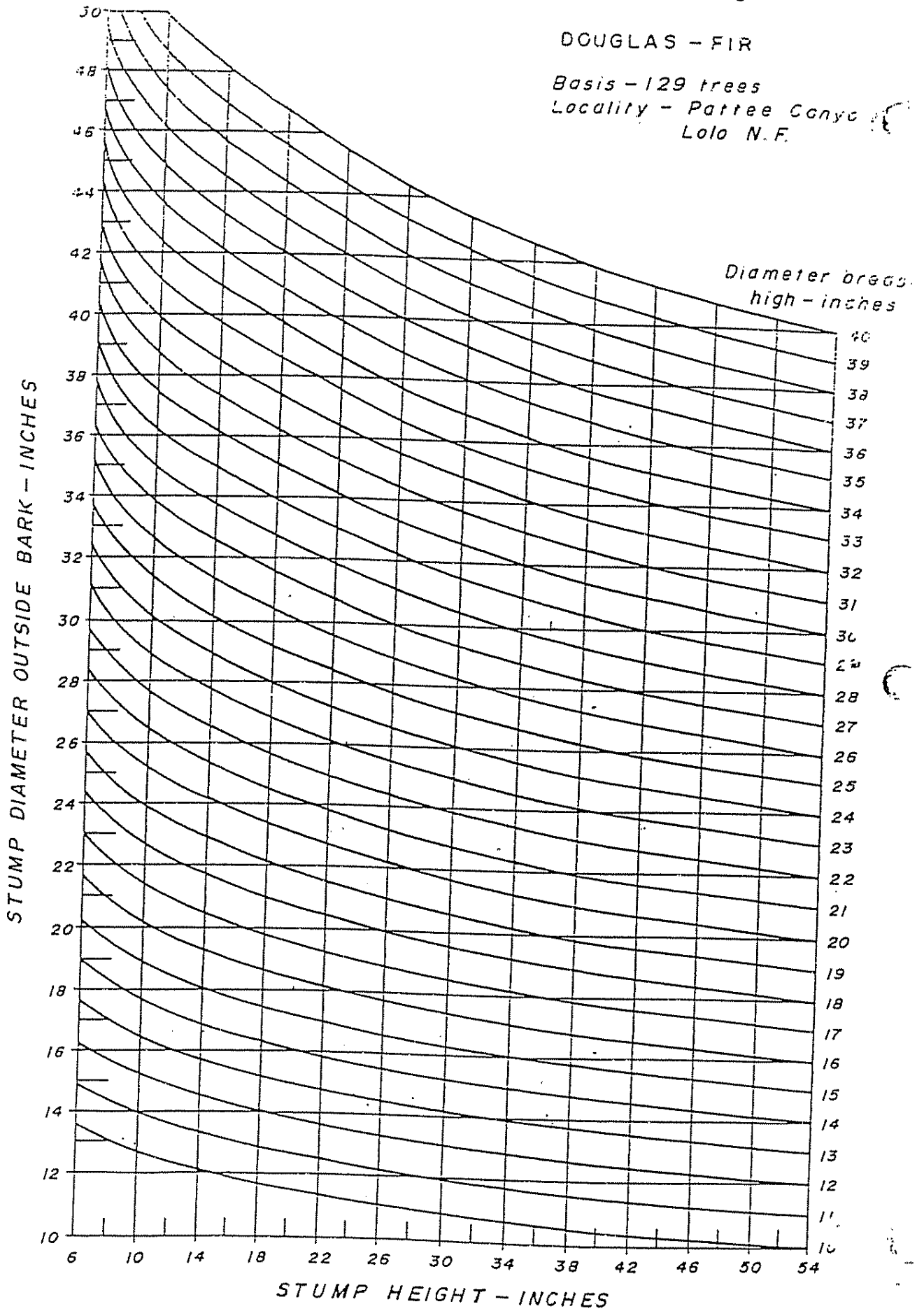
PONDEROSA PINE

Basis - 190 trees
Locality - Pattee Canyon,
Lolo N.F.



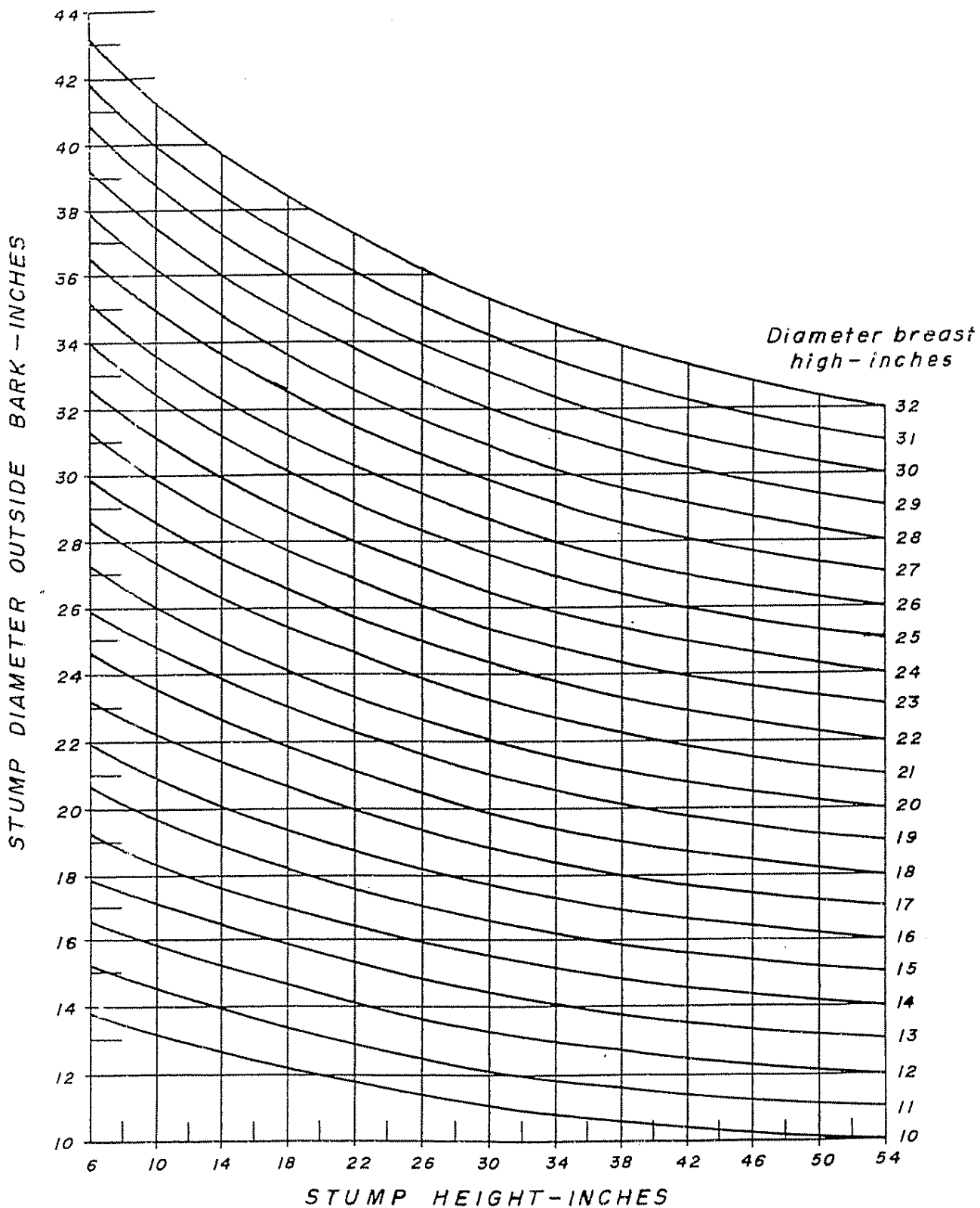
DOUGLAS - FIR

Basis - 129 trees
Locality - Pattee Canyon
Lolo N.F.



ENGELMANN SPRUCE

Basis - 87 trees
Locality - Cedar Creek,
Flathead N.F.



STATE OF IDAHO
DEPARTMENT OF LANDS

PAYMENT FOR LUMP-SUM RIGHT-OF-WAY OR TIMBER TRESPASS

Compliance No. 88888 B
(Required if slash payment included)

Right-of-Way _____

Trespass XXX
(Indicate by X)

Supervisory Area Northeast

No. TR-9-0003

Forest Protective District East Valley

R/W effective date _____

R/W expiration date _____

TR date _____

Payment has been received from: Blackie Longthumb

Address: RT 4, Box 1A, Eastside, Idaho 89999

for timber products cut on State lands described as follows:

Subdivision	Section	Township	Range	Acres
Pts. SWSW	36	76N	16E	

County #1 Swan Slash Rate _____ Endowment/% PS 100%

County #2 _____ Scale Rate: _____ Endowment/% _____

Product Description	Volume	Single Stumpage Rate**	Single Stumpage Charge	Penalty Stumpage Charge
Ponderosa Pine	.05 M	150.00	7.50	4.00
Doug-fir & Larch	1.80 M	75.00	135.00	4.00
Grand fir	.72 M	50.00	36.00	4.00
Stumpage Total			178.50	

Slash Total \$ 10.28

Scale Total \$ 23.68*

*Actual Cost of Scaling

**Double Stumpage Rate

Other \$ _____

Total Payment \$ 243.43
(actual charge or total by rate)

Big Boss
Area Supervisor

By _____

REPORT OF INSPECTION

NO. TR-42-5004 NAME Pulp Fiction Trespass REPORT NO. 1

Entity Clearwater Paper Corp. PO Box 1126 Lewiston, ID 83501					Contact Chad Farrell and Robert Kennedy		
DESCRIPTION OF AREA INSPECTED					Date of this Report:	Date of Last Report:	
Subdivision or Unit	SEC	TWP	RGE	ACRES	8/2/2017	N/A	
Pts. E2NE	1	35N	4E	2.75	Endowment Breakdown		
Pts. SWNW	6	35N	5E	0.25	CI(92%), P(8%)		

REMARKS:
 Clearwater Paper Corp. purchased a timber sale - Pulp Fiction (TS-42-4195) in early 2017. Their feller buncher operator was in the process of felling R-O-W timber on Spur D of Pulp Fiction, when he came upon a junction with Spur-B of Happy Gulch Pulp (HGP), which is not under contract at this time (see attached map). The operator missed a curve in the centerline for Spur-D and began cutting R-O-W on Spur-B (HGP). The operator didn't realize his mistake until he had come to the end of Spur-B; he knew the road was supposed to loop back into the rocky Kamiah Gulch Road, but the road he was on came to a dead end. In the end, the R-O-W had been felled on the entire Spur-B (HGP) which is 0.4 miles long. The operator reported this issue directly to Patrick Hagen. Hagen was the F-I-C who prepared Pulp Fiction and Happy Gulch Pulp, but as the result of his recent promotion to Area Manager, administration duties of this sale were transferred to myself. Hagen and I discussed the issue and decided to contact the Timber Bureau for guidance on how to proceed. We were informed that this situation falls under the definition of a timber trespass (Idaho Code 6-211) given that timber was felled outside of the contract boundary without authorization. Under Idaho code, the person/entity committing the trespass must be billed for triple stumpage based upon the contract price of the associated timber sale if applicable. In this case, the contract prices of Pulp Fiction will be used for billing. Separate load tickets will be issued by the Timber Bureau for the trespass loads, and then they will be scaled. A trespass letter will serve as a billing statement, and will be issued to Clearwater Paper once the loads have been hauled and scaled.

Volume estimate is based upon the Pulp Fiction cruise data, length of road, and clearing width. Estimate of charges are as follows:

Species	Vol(MBF)	Price/MBF	Value Extended (Single Stumpage)	Value Extended (Triple Stumpage)
CE	25	\$720.00	\$18,000.00	\$54,000.00
GF	24	\$251.00	\$6,024.00	\$18,072.00
DF/L	5	\$366.44	\$1,832.20	\$5,496.60
PP	2	\$230.23	\$460.46	\$1,381.38
Ced. Prod.	3	\$156.50	\$469.50	\$1,408.50
Pulp	36	\$20.00	\$720.00	\$2,160.00
			Total \$27,506.16	Total (3X) \$82,518.48
Slash	95	\$0.12	\$11.40	NA
Scaling	95	\$4.75	\$451.25	NA
			Slash & Scaling Total \$462.65	

Total Estimated Charges: \$82,981.13

Inspector: Ben Baldwin (F-I-C)	Date: 2-Aug-17
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IDAHO DEPARTMENT OF LANDS
DIRECTOR'S OFFICE
Statehouse, Room 121, Boise, Idaho 83720

MEMORANDUM

DATE: October 17, 1988

TO: Area Supervisors
Resource Managers

FROM: Steven J. Schuster S.S.
Legal Counsel

SUBJECT: Wilfulness and Treble Damages for Timber Trespass

Operations Memorandum No. 971 discusses the procedures to be followed in the case of timber trespass from state lands. Section 3.d of the memorandum states that treble stumpage will be assessed when there is evidence to show that the trespass was intentional and wilfully committed. This memorandum is intended to clarify for field staff what an "intentional and wilful" trespass is.

Idaho Code Section 6-211 states:

Any person who cuts down or carries off any wood or trees or timber or removes top soil from, or dumps trash or debris on, any land belonging to the State of Idaho without lawful authority is liable to the State of Idaho for treble the amount of damages, which amount may be recovered in a civil action therefore.

This language is similar to a related timber trespass statute, 6-202, which applies to all lands, not just state lands. Although the words are not in the statute, the Idaho Supreme Court (and many other state courts) requires an injured party to show

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wilfulness to obtain treble damages. Menasha Woodenwear Co. v. Spokane International Railway Co., 19 Idaho 586, 115 P. 22 (1911); Earl v. Fordice, 84 Idaho 542, 374 P.2d 713 (1962). "Wilful" is defined in the case of Archbold v. Huntington, 34 Idaho 558, 565, 201 P. 1041 (1921):

Wilfully ... implies simply a purpose or willingness to commit the act or make the omission referred to. It does not require any intent to violate law, in the sense of having an evil or corrupt motive or intent. It does imply a conscious wrong and may be distinguished from an act maliciously or corruptly done in that it does not necessarily imply an evil mind, but is more nearly synonymous with "intentionally," "designedly," "without lawful excuse" and therefore not accidental.

(Citations omitted.) With this definition in mind, I will examine Idaho case law to illustrate what wilful is. Since there is limited case law in Idaho, I will then examine a number of cases from Washington, where this issue has been discussed in much greater detail.

In Menasha Woodenwear, the court did not discuss the facts of the case as it related to the wilfulness of the timber trespass; the court merely decided a technical pleading question. In Earl, the Supreme Court overruled a trial court's determination that the defendant was liable for treble damages.

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In reviewing the evidence that the court felt indicated that wilfulness was not shown, the following facts were discussed:

As to whether this alleged trespass was done wilfully and intentionally, the record discloses that prior to the time there was any cutting of timber Mr. Fordice first established what he believed to be the true line between the tracts of the respective parties. Fordice had considerable experience in establishing lines in timber areas and cutting timber. He had, and used, a copy of the field notes of the governmental surveyor that surveyed the area. The points of a line established by him on his survey coincided very closely to the starting and finishing points of the lines as established by plaintiff's witness Mr. Grow, a licensed engineer. All the witnesses that testified as to establishing the line referred to a local magnetic attraction that deflected compass readings while traversing this line between the tracts. The record clearly reflects the ruggedness of the terrain, and the local magnetic attraction. Even with these problems, the starting point to the north of the line and the finishing point on the south of the dividing line were located by all witnesses within a very close area although there is some substantial (sic) disagreement as to the location of the line on the ground.

The only reported Idaho case which says what is not wilful, and no cases discuss what is wilful. One other case bears mentioning: Boulton v. Telfer, 52 Idaho 185, 12 P.2d 767 (1932). This was a grazing trespass case where the defendant had claimed that he was not liable for the trespass because he was ignorant of where the lines of the homestead entry were. The court found that this ignorance did not excuse the trespass and upheld the judgment below that the trespass was wilful.

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The Washington appellate courts have had more experience dealing with the wilfulness aspect of timber trespass. The following are some relevant quotes that I believe may be useful for you in evaluating a timber trespass. I must caution that these cases are not directly applicable to Idaho because they are from another jurisdiction and because the statutory framework in Washington is different. However, the judicial insights are useful.

In Smith v. Shiflett, 403 P.2d 364 (1965)(Wash. 1965), the Washington Supreme Court upheld the trial court's award of treble damages and observed as follows:

The defendant Shiflett, who actually cut the timber while operating in several different sections, never made any pretense of making a survey; nor did he attempt to find out who owned the land where he was cutting. Shiflett said that the one person ... who gave him instructions where to cut, told him to cut everything beyond a certain gate. The first tree he cut was a quarter mile behind the gate, and he was immediately advised by one of the plaintiffs ... that the tree belonged to the plaintiffs and that they owned land in that area. This was adequate to put defendant Shiflett on notice that the ostensible owner who had given him his only instruction ... did not know where the property lines were, and that he (Shiflett) would be proceeding at his own risk in cutting any timber without further investigation.... Shiflett just moved a half or three quarters of a mile east and cut thirty more trees without any further investigation.

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The best that can be said for Shiflett is that he didn't deliberately cut the trees, knowing them to belong to the plaintiffs; but he proceeded without making any survey or any adequate investigation, and without probable cause to believe that the trees being cut were on land where he had authority to be.

We have had occasion to hold that obviously inadequate surveys were not evidence of good faith; and that evidence of willfulness may be established by circumstantial evidence.

(Emphasis added; citations omitted.) Similarly, in Longview Fibre Co. v. Roberts, 2 Wash.App. 480, 470 P.2d 222 (1970), the court stated as follows:

The essence of the element of willfulness in this case lies in the defendant's failure to locate a boundary; his failure to employ persons even reasonably skilled or experienced in running boundary lines; his ignoring the request of his own employee to employ persons so skilled; his failure to consult with plaintiff in any manner in an attempt to locate boundary corners; his decision to proceed with the logging operations without having any reasonable knowledge of the location of the corners or the lines; and his actual participation in those actions up to three days prior to discovery of the trespass. Those facts conclusively demonstrate to us that the defendant elected to proceed with the operation in reckless disregard of the probable consequences.

(Emphasis added; citations omitted.) In Wheeler v. Fruhling, 341 P.2d 874 (Wash. 1959), the Washington Supreme Court cited the case of Mullally v. Parks, 29 Wash.2d 899, 190 P.2d 107 (1948) for the following proposition:

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Where a person has knowledge of a bona fide boundary dispute, and thereafter consciously, deliberately, and intentionally enters upon the disputed area for the purpose of destroying, and does destroy, trees or other property which cannot be replaced, such acts are neither casual or involuntary nor can they be justified upon the basis of probable cause for belief by the tortfeasor that he owned the land, but, on the contrary, are without lawful authority and will subject such person to treble damages as provided by statute.

Finally, in Blake v. Grant, 397 P.2d 843 (1964) the Washington Supreme Court stated as follows:

The evidence is largely circumstantial, but the court could properly find the necessary element of wilfulness on the part of appellants and their employees in attempting to establish the boundary line without locating a proper starting point; failing to talk to adjoining owners about the true line; in failing to see a previously blazed dividing line; and in making a major error in direction in running the east-west line.

Thus, from the above quotes, you can see the behavior that may be better described as careless or negligent, e.g. not making an effort to ascertain the lines, may be interpreted as being wilful. Of course, the facts of any particular situation are going to be different and all relevant mitigating factors should be considered in assessing whether a trespass is wilful or not. But it seems clear that an operator is charged at the very least with the responsibility of making a good faith attempt to

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determine where property lines might be. Communication with the adjacent owner may also be a significant factor.

I believe the state has some legal basis to argue that wilfulness should not be required to obtain treble damages under Idaho Code Section 6-211 when state lands are endowment lands, i.e. there should be strict liability for treble damages when trespassing on the state. Until this issue is legally decided, however, I recommend that staff proceed on the assumption that wilfulness is a necessary element.

SJS/pks